

72102

CAUSE NO. 12,764

THE STATE OF TEXAS	§	IN THE DISTRICT COURT OF
	§	
VS.	§	TITUS COUNTY, TEXAS
	§	
BILLY JOE WARDLOW	§	76TH JUDICIAL DISTRICT

STATEMENT OF FACTS

VOIR DIRE EXAMINATION

November 2, 1994

VOLUME 17 of 43 volumes

FILED IN
COURT OF CRIMINAL APPEALS

OCT 11 1995

Troy C. Bennett, Jr., Clerk

ORIGINAL

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

FILED IN
COURT OF CRIMINAL APPEALS

OCT 11 1995

Troy C. Bennett, Jr., Clerk

VOLUME 17

VOIR DIRE EXAMINATION

NOVEMBER 2, 1994PAGE/VOLUME

APPEARANCES 1/17

MORNING SESSION 3/17

POTENTIAL JUROR, TERRY D. LEE, (RECALLED)
DISCUSSION BY COURT 3/17POTENTIAL JUROR, BOBBY WAYNE TOSH
EXAMINATION BY MR. LEE 9/17

RECESS 28/17

POTENTIAL JUROR, GREGORY SCOTT HAMMONDS
EXAMINATION BY MR. TOWNSEND 32/17DISCUSSION HELD OUTSIDE THE PRESENCE AND HEARING
OF THE POTENTIAL JUROR 54/17

DISCUSSION CONCLUDED 60/17

POTENTIAL JUROR, GREGORY SCOTT HAMMONDS, (CONTINUING)
CONTINUING EXAMINATION BY MR. TOWNSEND 60/17
EXAMINATION BY MR. OLD 64/17DISCUSSION HELD OUTSIDE THE PRESENCE AND HEARING
OF THE POTENTIAL JUROR 72/17

RECESS 76/17

POTENTIAL JUROR, REAGAN LEE EAVES
EXAMINATION BY MR. LEE 79/17
EXAMINATION BY MR. HINSON 98/17DISCUSSION HELD OUTSIDE THE PRESENCE AND HEARING
OF THE POTENTIAL JUROR 121/17

NOON RECESS 122/17

AFTERNOON SESSION 122/17

POTENTIAL JUROR, LaWYANDA JOYCE PRINCE
EXAMINATION BY MR. TOWNSEND 125/17
EXAMINATION BY MR. OLD 147/17

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

VOLUME 17

VOIR DIRE EXAMINATION

(CONTINUING)

NOVEMBER 2, 1994

PAGE/VOLUME

DISCUSSION HELD OUTSIDE THE PRESENCE AND HEARING OF THE POTENTIAL JUROR	166/17
DISCUSSION CONCLUDED	167/17
RECESS	168/17
<u>POTENTIAL JUROR, JANELL ANN SMITH</u> EXAMINATION BY MR. LEE	173/17
COURT ADJOURNED	201/17
COURT REPORTER'S CERTIFICATE	202/17

VOLUME 17

ALPHABETICAL INDEX OF

POTENTIAL JURORS

NOVEMBER 2, 1994PAGE/VOLUMEPOTENTIAL JUROR, REAGAN LEE EAVES

EXAMINATION BY MR. LEE 79/17

EXAMINATION BY MR. HINSON 98/17

POTENTIAL JUROR, GREGORY SCOTT HAMMONDS

EXAMINATION BY MR. TOWNSEND 32/17

EXAMINATION BY MR. TOWNSEND (CONT.) 60/17

EXAMINATION BY MR. OLD 64/17

POTENTIAL JUROR, TERRY D. LEE

DISCUSSION BY COURT 3/17

POTENTIAL JUROR, LAWYANDA JOYCE PRINCE

EXAMINATION BY MR. TOWNSEND 125/17

EXAMINATION BY MR. OLD 147/17

POTENTIAL JUROR, JANELL ANN SMITH

EXAMINATION BY MR. LEE 173/17

POTENTIAL JUROR, BOBBY WAYNE TOSH

EXAMINATION BY MR. LEE 9/17

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CAUSE NO. 12,764

THE STATE OF TEXAS	§	IN THE DISTRICT COURT OF
	§	
VS.	§	TITUS COUNTY, TEXAS
	§	
BILLY JOE WARDLOW	§	76TH JUDICIAL DISTRICT

STATEMENT OF FACTS

VOIR DIRE EXAMINATION

November 2, 1994

VOLUME 17 of 43 volumes

Before Honorable Gary R. Stephens
Judge by Judicial Assignment
(Venue changed from Morris County, Texas)

APPEARANCES

ATTORNEYS FOR THE STATE OF TEXAS:

MR. RICHARD TOWNSEND
District Attorney
Morris County Texas
Morris County Courthouse
Daingerfield, Texas 75638

and

MR. RANDY LEE
Assistant District Attorney
Cass County Texas
P.O. Box 940
Linden, Texas 75563

1 ATTORNEYS FOR THE DEFENDANT:

2 MR. BIRD OLD, III
3 Old, Rolston & Old
4 P.O. Box 448
5 Mt. Pleasant, Texas 75456-0448

6 and

7 MR. LANCE HINSON
8 Law Offices of Danny Woodson
9 P.O. Box 399
10 Mt. Pleasant, Texas 75456-0399
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1 On the 2nd day of November, 1994, the
2 above-entitled and numbered cause came on for hearing
3 before said Honorable Court, Judge Gary R. Stephens of
4 Midlothian, Texas, serving by judicial assignment in the
5 District Court of Titus County, Texas, on change of venue
6 from Morris County, Texas, and the following proceedings
7 were had:

8
9 (The following occurred outside the
10 presence and hearing of the potential juror:)

11
12 THE COURT: All right. Let's
13 bring in Terri Lee and then after we get settled I will
14 need two copies of this. (Indicating)

15 THE BAILIFF: Yes, sir.

16
17 (Off the record discussion.)

18
19 TERRI D. LEE, Potential Juror #412,
20 was recalled as a Potential Juror and, having been
21 previously sworn by the Court, testified further as
22 follows:

23
24 THE COURT: Ms. Lee, when you
25 were here before we discussed various principles of law.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

THE POTENTIAL JUROR: Yes.

THE COURT: Talked about what law would be applied to this case and when we talked about the law we also informed you that in this state a person with a life sentence does have a possibility of parole, that we do not have life without parole.

THE POTENTIAL JUROR: Yes.

THE COURT: You were also told that you would be instructed that in answering the issue, assuming that you find the verdict of guilty then when you get into the punishment stage you would be answering some issues and you were told that if you found a person guilty of capital murder you would be instructed that you cannot consider the fact that parole exists in answering the questions.

In other words, you must be able to assume that life can mean a life sentence and you are not to answer the questions based upon the fact that you don't want a person to be out so you are going to take into account parole and answers so that a death sentence may apply, you were also told that in the event you found a person guilty of something less than capital murder you might be called upon to assess a certain number of years as a sentence and that you were not to take into account the possibility of parole, you are to determine what you

1 as a juror think would be an appropriate just sentence
2 and accept the sentence there without regard to parole.

3 You told us that you could do that.

4 You were also informed that in this
5 state if a person is convicted of capital murder that
6 person must spend 40 calendar years in prison before that
7 person would be considered eligible for parole,
8 absolutely no chance of parole until 40 years is served.

9 Ma'am, we misinformed you, the law is
10 40 years but that law took effect about a month or so
11 after the alleged date of this offense.

12 On the date of this alleged offense the
13 law provides that if a person is convicted of capital
14 murder that person must spend a minimum of 35 years in
15 prison, calendar time before he or she could be eligible
16 for parole.

17 So we misinformed you by five years.

18 Does the knowledge that a life sentence
19 in a capital murder case equals a minimum of 35 years
20 change any of your answers about your ability to
21 disregard parole?

22 THE POTENTIAL JUROR: No, sir.

23 THE COURT: Does it give you
24 any concern about your ability to disregard parole in
25 answering questions?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

THE POTENTIAL JUROR: No.

THE COURT: That's all we have
got.

You can go back to work.

We will let you know something Friday,
hopefully.

THE BAILIFF: Thank you,
Terri.

(The following occurred outside the
presence and hearing of the potential juror:)

THE COURT: Are you ready for
Mr. Tosh?

THE BAILIFF: Watch your step
as you go up there.

BOBBY WAYNE TOSH, Potential Juror #293,
was called as a Potential Juror and, having been
previously sworn by the Court, testified as follows:

THE COURT: Good morning, sir.

THE POTENTIAL JUROR: Good
morning.

Are you doing all right?

1 THE COURT: Doing just fine.
2 For the record, are you Bobby Tosh,
3 " T O S H ?"

4 THE POTENTIAL JUROR: Yes,
5 sir. I am.

6 THE COURT: This is juror
7 number 20.

8 Sir, I am Gary Stephens, I'm presiding
9 over the jury selection in this case and the trial.

10 THE POTENTIAL JUROR: All
11 right.

12 THE COURT: We have two
13 lawyers present representing the State of Texas, we have
14 the District Attorney from Morris County, Mr. Richard
15 Townsend.

16 THE POTENTIAL JUROR: Okay.

17 THE COURT: And we have the
18 District Attorney to be from Cass County, Mr. "Randy",
19 "Randall" Lee, we have two Defense Attorneys, we have Mr.
20 Bird Old, III. (Indicating)

21 MR. OLD: How are you doing?

22 THE COURT: And Mr. Lance
23 Hinson.

24 MR. HINSON: Good morning.

25 THE COURT: Next to Mr. Hinson

1 is the person charged, Billy Joe Wardlow.

2 Sir, the lawyers have read your
3 questionnaire and are familiar with your answers, they
4 are going to be talking to you about some of those
5 answers and they are also going to talk to you about the
6 principles of law involved in a death penalty case.

7 You will be asked a lot of questions and
8 the answers will let us know whether or not to put you
9 on the jury.

10 In order to be a qualified juror you
11 must be able to understand and follow the law, you don't
12 even necessarily have to agree with our law. If you do
13 disagree with some facet of our law but you can set aside
14 your disagreement and follow the law then you are a
15 qualified juror but if you have a disagreement with the
16 law that might prevent you from following the law you are
17 not qualified.

18 So we are going to explain the law to
19 you, talk to you about some principles of law, maybe
20 explain some of the issues and get your feelings and
21 thoughts on this and decide whether you are qualified
22 and, more importantly, decide whether to put you on the
23 jury.

24 We have found that most people that we
25 have talked to are qualified but that doesn't necessarily

1 mean they are an appropriate juror for a death case.

2 The only way we can decide whether this
3 is the type of case for you to serve on is for you to be
4 open and honest with us and just share your thoughts and
5 opinions.

6 There's no right or wrong answers and
7 there's no right or wrong opinions, it's your opinions
8 that we are concerned with, whether they agree with ours
9 is immaterial. You are the one that we are concerned
10 with today so just don't worry about the effect of your
11 answers and just tell us the way that you think.

12 Now, if you have questions of us also,
13 sir, be sure you tell us what is on your mind and stop
14 us and ask your questions.

15 This will be the only time we will be
16 able to talk to you if you are chosen as a juror.

17 Do you have any questions?

18 THE POTENTIAL JUROR: No, sir.

19 THE COURT: All right. Mr.

20 Lee.

21
22 VOIR DIRE EXAMINATION

23 BY MR. LEE

24
25 Q My name is Randy Lee and as the Judge mentioned

1 I will be asking you a few questions and as he stated
2 there's no right or wrong answers.

3 Basically what the purpose of this is
4 is to allow us to get to know you, get to know a little
5 bit about the way you think, your opinions.

6 And in order for us to decide that is,
7 both sides to decide whether we think you are fair in
8 this case or whether this is a case for you to serve on,
9 you know, if it's a relative or some situation to where
10 this just might not be the case then that's the purpose,
11 part of the purpose of voir dire.

12 And that's all we want is just basically
13 your opinions and maybe a little bit about how you arrive
14 at your opinions and that's just to help us decide.

15 I believe you stated in your
16 questionnaire that you don't really have a particular
17 problem with the death penalty per se, that you think
18 it's -- that it's appropriate in some cases?

19 A Yes.

20 Q And do you feel like that you personally could
21 do it if in the right case if you were on the jury?

22 A Yes, sir. I could.

23 Q That you could vote for it?

24 A Yes, sir.

25 Q In Texas in order for you to interpret our

1 questions you kind of need to understand a little bit of
2 the law as to that, you know, what we are talking about.

3 When we say "capital murder" in Texas
4 there is several types of homicide. Capital murder is
5 the highest form of homicide then there's murder and then
6 there's some lesser included type of offenses, for
7 instance murder would be intentionally and knowingly
8 cause someone's death without any legal justification
9 like self defense or some of the other justifications.

10 If you shoot your neighbor just to kill
11 them then you are obviously, that's murder, then there's
12 another kind of murder also.

13 Capital murder is murder plus something
14 and the statute outlines the various somethings that
15 could make it capital.

16 For instance, killing a policeman or
17 fireman in the line of duty then that is murder plus
18 something making it a little different, a little more
19 serious. Killing more than one person, committing a
20 robbery and murdering someone or kidnapping, various
21 offenses that the statutes allow for capital murder.

22 Do you kind of see the difference there?

23 A Yes, sir.

24 Q Where it's making capital murder -- murder is
25 serious but capital murder may be a little more serious.

1 You say you in a capital murder
2 situation don't -- you think -- could you give the death
3 penalty in the right fact situation?

4 A Yes, sir. I do.

5 Q In the right fact situation could you consider
6 a life sentence on a capital case?

7 A I don't believe I could.

8 Q You think every capital case or every murder
9 case deserves the death penalty?

10 A I believe some of them do.

11 Q Some of them would, some of them wouldn't, is
12 that what you are saying?

13 A Yes, sir.

14 Q In Texas the range of punishment in a capital
15 case is one of two things, you either get the death
16 penalty or get a life sentence and that is the range.

17 So you think -- could you consider --
18 the law requires that you consider or at least be able
19 to think about this sentence and you have to be able to
20 consider or think about the full range of punishment in
21 a case.

22 A Yes, sir.

23 Q And of course you don't know the facts in this
24 situation, do you?

25 A No.

1 Q Do you know anything about it?

2 A No, sir. No really.

3 Q Do you recall reading anything about it in the
4 paper?

5 A No. Just what I had heard from other people.

6 Q Okay. And those other people, did they act
7 like they knew what happened or were they just reporting
8 what the paper said or what they heard?

9 A Basically what they had heard.

10 Q So they weren't witnesses to the offense or
11 anything, that someone telling you --

12 A No, sir.

13 Q -- purporting to know what they were really
14 talking about?

15 A No.

16 Q Anything about hearing that through the rumor
17 mill that would interfere with your ability to decide
18 fairly?

19 A No, sir.

20 Q Obviously the law requires that you be able to
21 be fair and impartial and that pretty much means put
22 aside anything that you have heard about it and if you
23 have personal feelings that are strong that you be able
24 to put aside those feelings and follow the law, follow
25 the instructions.

1 A Yes, sir.

2 Q Do you think you could do that?

3 A Yes, sir.

4 Q Sometimes in cases that -- the State has the
5 burden of proof in all cases and we have to prove beyond
6 a reasonable doubt that what we allege happen happened.

7 Do you have any problem with that?

8 A No, sir.

9 Q You would hold us to our burden of proof, make
10 us do our job?

11 A Yes, sir.

12 Q And we welcome this burden, obviously it
13 wouldn't be fair if there was any other type of burden,
14 nobody wants an innocent man to go to the pen and be
15 punished and obviously that's a fair burden?

16 A Yes, sir.

17 Q And the range of punishment, for instance in
18 a case of this nature we are alleging that the Defendant
19 committed murder in the course of committing a robbery
20 or attempted robbery?

21 A Yes, sir.

22 Q So that makes it capital.

23 And I explained earlier if it came down
24 that we couldn't for some reason -- and this is just
25 hypothetical -- for some reason couldn't prove the

1 robbery and therefore it would be a -- it would actually
2 just be a murder, could you kind of see that if we don't
3 prove beyond a reasonable doubt a robbery took place then
4 it would be murder?

5 Under Texas law murder has a wide range
6 of punishment, anywhere from five years probation to 99
7 years or life. And the reason they have such a wide
8 range of punishment is because there's all types of
9 murder.

10 I mean you could have a situation where
11 an 80 year old couple had lived together since they were
12 grown, married, raised their kids but the wife has
13 cancer, terminally ill, is going to die within a few
14 months but is in intense pain and just begs her husband
15 to help her die and he rushes down and unplugs the life
16 support machine and she does.

17 In Texas that would be murder but that
18 might be the type of murder that you could consider the
19 lesser punishment like five years probation or some other
20 lower form.

21 Then we have the more harsh murder, the
22 cruel murder that obviously you would look at the upper
23 ranges.

24 Do you think you could consider the full
25 range of punishment in a murder that you --

1 A Yes.

2 Q -- in a murder case?

3 A Yes.

4 Q And there are situations where you could
5 consider five years probation as well as life in the
6 penitentiary and other type cases?

7 A Yes, sir.

8 Q In Texas we, the State has the burden of proof
9 not only in the guilt portion, it's a two-part trial, in
10 Texas we have the guilt/innocence portion where we -- the
11 only evidence that is introduced is as to guilt or
12 innocence, not as to what to do with -- and not as to
13 punishment and not as to any other element but just
14 simply guilt or innocence and if the person is convicted,
15 found guilty during the first portion we go to a
16 punishment stage and now if you find him guilty then you
17 decide what do you do with them.

18 Then there's a little mini trial or
19 trial within a trial all over again, evidence is
20 introduced as to what we should do with a person once we
21 found them guilty.

22 That will be all kinds of evidence, age,
23 background of the defendant, criminal history, just
24 various information that could come out in this part of
25 the trial.

1 The law requires that you basically --
2 that you not make up your mind or that you make up your
3 mind in order -- not make it up ahead of time -- for
4 instance, if you are in the guilt and innocence portion
5 and you decide this man killed him, he committed capital
6 murder, he's guilty and ought to hang, obviously you
7 haven't heard all the evidence yet and you are judging
8 the guy on that.

9 The law requires that you be able to
10 withhold decision-making until the right time.

11 Do you think you could do that?

12 A Yes, sir. On that part I could.

13 Q And in a case like this obviously you could or
14 what I'm asking you, can, you can wait until all the
15 evidence is in to make up your mind fairly?

16 Obviously during the trial you are going
17 to be thinking about it, evaluating the evidence as it
18 comes in. Everybody does that. But can you hold off
19 making your decision until you -- all the evidence is in
20 and you have heard the whole case?

21 A Yes, sir. I believe I could.

22 Q Texas, in Texas on a capital case during the
23 punishment phase after you found them guilty then we go
24 to a punishment stage and there are two questions that
25 are asked in that, one is -- I can -- you have a list up

1 there called "Special Issues" at the top. (Indicating)

2 THE COURT: It's under that
3 page right there. No. To your right, the second one.

4 That's it. (Indicating)

5 MR. LEE: Could you read
6 Special Issue #1 then we will ask you some questions
7 about it?

8 THE POTENTIAL JUROR: "Do you
9 find from a" --

10 Q (BY MR. LEE) You can read it to yourself if
11 you like, it will save some time.

12 In case you don't realize the Court
13 Reporter is taking down everything we say and putting it
14 down.

15 A Okay.

16 Q On Special Issue #1 -- I forgot where I was for
17 a second -- it's talking about the probability of
18 committing future acts of violence.

19 Assuming the Judge gives you a
20 definition of that "probability" means "more likely than
21 not", do you think you could follow that instruction and
22 use that definition and not another definition that you
23 might have in your mind just on the definition of
24 "probability?"

25 A I believe I could.

1 Q Do you have another definition in your own
2 mind? Would you think "probability" to be a little
3 higher or a little lower standard than that?

4 I don't think most people think about
5 definitions, would that sort of fit within your range of
6 your own personal definition, "more likely than not?"

7 So, in Texas the way Special Issue #1
8 -- we have to prove beyond a reasonable doubt that there
9 is a probability, that is they are more likely than not
10 -- to commit -- the defendant will commit criminal acts
11 of violence.

12 That's not that he will necessarily
13 commit another murder because obviously you can't, you
14 know, you can't or it's very difficult to prove something
15 that high but "acts of violence", this could be anywhere
16 from touching somebody in the nose to robbing banks to
17 pulling guns on people and shooting them, just various
18 things, just a wide range of violence.

19 And it says "society."

20 "Society" can also mean out on the
21 streets as well as the people in the penitentiary, you
22 know, nurses in the penitentiary, doctors, there are
23 guards, there are prisoners. Obviously we don't want
24 anybody committing acts of violence.

25 Do you think you can hold us to that

1 standard and make us prove that beyond a reasonable doubt
2 the defendant is guilty -- there is a probability that
3 he will commit criminal acts of violence in the future
4 that after you found him guilty?

5 A Yes, sir.

6 Q And probability or more likely than not would
7 kind of mean probably more than 50 percent chance, you
8 know, like 51 or 52. It would be more than 50/50 I would
9 think.

10 Would that kind of fit with what you
11 would define "more likely than not?"

12 A Yes, sir.

13 Q And what we are talking about, "criminal acts
14 of violence", actually -- obviously we are talking about
15 "acts of violence", not necessarily violating the law,
16 there are many ways of violating the law from speeding
17 tickets to fairly serious offenses but they are not
18 violent offenses.

19 Can you hold us to that, make us prove
20 that the person will be a danger and there's a
21 probability that he will commit acts of violence?

22 A Yes, sir.

23 Q And I will explain a little.

24 Let's go to Special Issue #2 on that
25 paper, if you will read it and we will talk about it.

1 THE BAILIFF: Your Honor, can
2 I interrupt a minute?

3 This is Spec Johnson from Morris County,
4 he will be taking care for me while I go to the other
5 courtroom.

6 THE COURT: Thank you,
7 Sheriff.

8 THE BAILIFF: I will be going
9 to right around the corner if you need me for anything.
10 We have got two of them.

11 THE COURT: Thank you for
12 letting me know.

13 Welcome aboard.

14 MR. LEE: Special Issue #2
15 talks about mitigating circumstances or circumstances
16 that might make a person less blameworthy than another
17 person.

18 You know, it's comparing to other people
19 or maybe society or as to your own personal experiences
20 nobody can tell you as a juror if you are selected what
21 "mitigating circumstances" is but to some people
22 mitigating circumstances could be, for instance, if the
23 defendant was severely mentally retarded, someone thinks
24 that, you know, he's so retarded he may be -- he doesn't
25 just understand as much, he understands what is going on,

1 he intentionally did it but he doesn't quite understand
2 quite as much as the average person.

3 But another person might think he still
4 needs to be held to the same standard or if the defendant
5 was intoxicated one person might feel like if he hadn't
6 have been drunk he wouldn't have done the offense, the
7 next person will feel like, well, he shouldn't have been
8 drunk, he still needs to be held responsible, some person
9 consider an age, young age or extreme age as mitigating
10 circumstances in felonies, background, the nature of the
11 offense, how it took place, any number of things can be
12 considered "mitigating circumstances."

13 Some of that might come from the State,
14 might come from the Defendant but the law requires that
15 you be able to -- this would be after you have already
16 decided he committed capital murder and that he's going
17 to have the potential or probability of being violent,
18 the law requires that you be able to consider or, wait,
19 look at the whole situation, be fair and look at all the
20 evidence including mitigating before you decide whether
21 a person should get the death penalty or not.

22 Do you think you could do that?

23 THE POTENTIAL JUROR: Yes,
24 sir.

25 Q (BY MR. LEE) You can wait until all the

1 evidence comes in and then make that decision?

2 Actually you will not be -- if you are
3 selected on the jury you will not have a blank to fill
4 in whether the person gets the death penalty or not, it's
5 basically decided on your answer to the questions.

6 Obviously you will be able to figure out
7 what the right answer will be to get a death penalty,
8 however you are not -- that's not supposed to be your
9 goal. Your goal is to answer the questions appropriately
10 and honestly and not try to bend the answers to get the
11 verdict that you think is appropriate.

12 Do you think you can do that and decide
13 fairly on those questions?

14 A Yes.

15 Q The law also requires -- everyone knows that
16 in Texas there is parole, that people become eligible,
17 that's true in capital cases, too.

18 The way the parole law is written that
19 person must serve 35 years in the penitentiary, calendar
20 time before he is even eligible for parole.

21 However, the law requires that you not
22 be -- that you not consider that or the fact that he --
23 that he even may get a parole. In deciding that you are
24 to make your decision only on what you think is fair,
25 whether it's life or death but not on the -- or the fact

1 there's parole.

2 Can you set aside the fact that you know
3 there's parole, you are going to know it but can you set
4 aside this and not consider that in setting your
5 punishment?

6 A Yes.

7 Q And in all these questions that we are asking
8 you kind of have to decide them in order -- obviously
9 there will be the guilt or innocence portion, you have
10 to make that decision, then you come to punishment, you
11 have to listen to all the evidence then you go to Special
12 Issue #1.

13 If you decide that there is no
14 probability of future acts of violence then you don't
15 even go to Number Two, you just answer that question,
16 "No", he wouldn't commit violence and he automatically
17 gets a life sentence.

18 However, if you feel like there's
19 probable acts of violence then you go to Special Issue
20 #2 and that's a catchall; is there anything about this
21 case that would make you not want to give him the death
22 penalty or to make you -- make you think life might be
23 the most appropriate punishment.

24 Can you make those decisions in order
25 and in the proper circumstances as the Judge requires in

1 his instructions?

2 A Yes.

3 Q The law requires basically that you not give
4 a head start to either side, that you be able to be fair
5 and that includes the witnesses.

6 For instance, the law requires if a
7 policeman testifies that you not automatically believe
8 him just because he's a policeman, that you will listen
9 to his testimony, see if it makes sense, whatever
10 standard you use to determine whether a person is lying
11 or not, that you use that on a policeman as well as the
12 defendant if he testifies or the defendant's mother, that
13 you listen to them, see what they are saying, make a
14 decision whether they are telling the truth, not give one
15 side a head start?

16 A Yes, sir.

17 Q Do you think you could do that?

18 A Yes.

19 Q Another profession that someone might want to
20 give a head start, if a preacher testifies obviously they
21 are not supposed to lie, either.

22 Would you give a preacher a head start
23 or anyone else or would you hold him to the same
24 standard?

25 A I wouldn't hold him to the same standard.

1 Q You would give him a head start or --

2 A No, sir.

3 Q Basically I don't think you understood my
4 question; basically you are supposed to hold all the
5 witnesses to the same standard in deciding whether they
6 are telling the truth or not give anyone a head start,
7 not automatically believe anyone so my question is; would
8 you automatically believe or would you give any advantage
9 if a preacher testified?

10 A No. I wouldn't.

11 Q Pardon?

12 A I would.

13 Q Repeat it to me once more.

14 Do you believe there's good preachers
15 or bad preachers, good policemen or bad policemen?

16 A I believe they are good.

17 Q Okay. Are you saying that you would give a
18 preacher a head start, that you would automatically
19 believe anything a preacher would say?

20 A Yes, sir. Yes, sir.

21 Q No matter what denomination?

22 A No.

23 Q You know, and you would not hold him to the
24 same standard as anyone else, you would just
25 automatically believe him?

1 A Yes.

2 Well, that's what I was raised to
3 believe.

4 Q And you can't set that aside and that standard
5 aside and hold the preacher or policeman to the same
6 standard as you would everybody else?

7 A No, sir.

8 MR. LEE: Your Honor, I think
9 that's all.

10 THE COURT: Sir, would you
11 step back into the waiting room for just a minute and let
12 me have a discussion with the lawyers?

13 THE POTENTIAL JUROR: Out
14 here?

15 THE COURT: There's so many
16 people here, just follow him, he will take you somewhere.

17
18 (Off the record discussion.)
19

20 THE COURT: Let's get on the
21 record.

22 It appears that this prospective juror
23 will basically say whatever either side wants and I want
24 the record to reflect there was a brief off the record
25 discussion and it has been indicated to me the parties

1 will excuse him.

2 Mr. Old, do you agree to excuse juror
3 number 20, Bobby Tosh?

4 MR. OLD: On the State's
5 motion we do not oppose it and Mr. Wardlow has authorized
6 me to do so.

7 THE COURT: All right.

8 MR. LEE: We so move.

9 We feel like he didn't answer
10 appropriately and could not be fair so we do move to
11 excuse him.

12 THE COURT: Then I will excuse
13 this juror.

14 Sheriff, just tell him that he has been
15 excused as a prospective juror then bring in our next
16 juror.

17 Do you all want a break first?

18 MR. TOWNSEND: Yes. About
19 five minutes.

20 THE COURT: Give us a couple
21 of minutes.

22 Just go ahead and tell him he's excused.

23

24 (Recess.)

25

1 GREGORY SCOTT HAMMONDS, Potential Juror #129,
2 was called as a Potential Juror and, having been
3 previously sworn by the Court, testified as follows:
4

5 THE COURT: Sir, if you would
6 come right up here and watch out for that first step.

7 Take a seat right there on that witness
8 stand.

9 Are you Gregory Hammonds?

10 THE POTENTIAL JUROR: Yes,
11 sir.

12 THE COURT: "H A M M O N D S?"

13 THE POTENTIAL JUROR: Yes,
14 sir.

15 THE COURT: This is juror 21.

16 Sir, I am Gary Stephens, I'm presiding
17 over this trial.

18 We have two lawyers representing the
19 State of Texas, we have the District Attorney from Morris
20 County, Mr. Richard Townsend, we have an Assistant
21 District Attorney soon to be the District Attorney from
22 Cass County, Mr. "Randy" or "Randall" Lee.

23 We have two Defense Attorneys, Mr. Bird
24 Old, III.

25 MR. OLD: Howdy.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

THE COURT: Mr. Lance Hinson.

MR. HINSON: Good morning.

THE COURT: Next to Mr. Hinson
is the person charged, Billy Joe Wardlow.

Now, Mr. Hammonds, the lawyers have read
your questionnaire and they are familiar with your
answers.

We are going to discuss those answers
with you and they also are going to discuss with you the
principles of law involved in a death penalty case.

You are going to be asked a lot of
questions, the answers will let us know whether or not
we should put you on this jury.

In order to be a juror you must be able
to understand and follow the law. You don't even
necessarily have to agree with the law, if you can set
aside any disagreement you have with our laws and follow
the law you are qualified.

It's kind of like filing income tax, you
may not like that but if you comply with it then you have
done what you are supposed to do.

THE POTENTIAL JUROR: Yes.

THE COURT: Sir, if you have
a disagreement with our law or some aspect of the law to
such an extent that you can't follow the law then you are

1 not qualified.

2 So, we need to discuss the laws with you
3 that will apply and find out what you think about those
4 laws.

5 We have also found, though, that even
6 jurors that understand and can follow the law and are
7 absolutely qualified aren't always an appropriate juror
8 in a death penalty case.

9 In other words, there can be something
10 in your background or your viewpoints that let us know
11 that even though you are a good juror maybe this isn't
12 the kind of case you need to sit on.

13 So we want you to share your thoughts
14 and opinions with us.

15 There are no right or wrong answers,
16 there's no right or wrong opinions, just yours.

17 THE POTENTIAL JUROR: Okay.

18 THE COURT: And if you will
19 be open and honest with us we will try to get you through
20 this as quickly as we can.

21 And if you have any questions you tell
22 us what is on your mind, stop whoever is talking to you
23 if you don't understand what they are asking, get them
24 to clarify. If you have a question that you want some
25 of us to answer direct your question to whoever you want

1 to answer it and we will try to answer anything that's
2 on your mind.

3 THE POTENTIAL JUROR: All
4 right.

5 THE COURT: This trial itself
6 will probably start just after the first of the year.

7 Do you know of any reason you would
8 not be available for a trial that might last anywhere
9 from -- well, let's just say two weeks after the first
10 of the year, first couple of weeks in January?

11 THE POTENTIAL JUROR: No.

12 THE COURT: All right. The
13 State may proceed.

14
15 VOIR DIRE EXAMINATION

16 BY MR. TOWNSEND

17
18 Q Mr. Hammonds, I'm Richard Townsend, along with
19 Randy Lee I represent the State of Texas in this case and
20 we, like the Judge says, we are going to ask you a lot
21 of questions that don't necessarily have any right or
22 wrong answers. We just want you to give us what your
23 opinion is.

24 I want to tell you right up front we are
25 seeking the death penalty against Mr. Wardlow in this

1 case and I have read your questionnaire and I believe I
2 have a pretty good understanding of your feelings about
3 the death penalty after looking at your answers to your
4 questions.

5 Is your feelings today basically the
6 same as they were the day you filled out the
7 questionnaire?

8 A Yes, sir.

9 Q Is that pretty well -- since you have been an
10 adult has that pretty much been your feeling about the
11 death penalty?

12 A Yes.

13 Q You said that it was appropriate in some cases
14 and that -- is that the way you feel?

15 A Yes.

16 Q Okay. Well, the kind of juror we need, Mr.
17 Hammonds, are those kind who can keep an open mind even
18 if a person is found guilty of capital murder as to what
19 the punishment should be, either a life sentence or the
20 death penalty.

21 And in order to be a fair and impartial
22 juror you have got to be able to keep an open mind about
23 that and not just automatically say, "Well, I just don't
24 think the death penalty is ever right" or on the other
25 hand say "I think the death penalty should happen in any

1 capital murder."

2 And based on your answers I believe you
3 could keep an open mind.

4 Do you believe you could?

5 A Yes.

6 Q Okay. Mr. Hammonds, I notice that you are a
7 certified peace officer and working as a security officer
8 so some of these things I'm talking to you about will be
9 things that you are probably familiar with so -- and if
10 so I apologize for that in advance but we are going to
11 need to go over some areas of the law and see how
12 familiar and whether you agree with that or not and that
13 sort of thing.

14 I think there are basically two kinds
15 of murder, one is non-capital or plain murder, that's
16 where someone has intentionally or knowingly caused
17 another person's death. Now, and that is to say there
18 wasn't self defense, it wasn't an accident, it was
19 intentionally and knowingly killed someone.

20 That is "murder" and it's punishable by
21 up to 99 years to life in the penitentiary.

22 On the other hand we have another type
23 murder, "capital murder" and that is another
24 intentionally causing someone's death as in the non-
25 capital murder plus something else and that "plus

1 something else" is that the murder was of a police
2 officer or fireman in the line of duty, that the murder
3 was a multiple murder of more than one person murdered
4 in the same episode or the murder took place during the
5 commission of a burglary or robbery or rape or something
6 of that nature.

7 Are you with me on that?

8 A Yes.

9 Q Do you feel like you understand the difference
10 between the two types of murder?

11 A I understand.

12 Q There's a copy of the indictment up there. If
13 you would take a look at that.

14 Do you see a copy of the indictment in
15 this case?

16 Do you see it up there? I think it's
17 marked.

18 THE COURT: Let me see what
19 -- no, it's that one right there. (Indicating)

20 MR. TOWNSEND: "Voir Dire
21 Exhibit 3."

22 If you would read that to yourself and
23 then I will talk to you about it.

24 THE POTENTIAL JUROR: Okay.

25 Q (BY MR. TOWNSEND) Okay. Can you see that if

1 the State could prove everything charged in that
2 indictment that would not just be a plain murder but
3 would be a capital murder?

4 A Yes.

5 Q Because of the murder and the robbery alleged,
6 okay?

7 The kind of juror we need, as I said,
8 you would be able to keep an open mind as to what the
9 proper punishment should be if the person is found guilty
10 of that.

11 The procedure in a capital murder trial
12 in Texas is such that the first part of the hearing is
13 involved in -- the first part of the trial is involved
14 in determining the guilt or innocence of the defendant.

15 At that point you are not concerned with
16 what the appropriate sentence would be, you are just
17 concerned with determining whether the person is guilty
18 or not guilty.

19 "Did he do it?"

20 And the important part for you to
21 remember is that the death penalty is not automatic. In
22 this case if a person is found guilty they are then --
23 you are going to hear more evidence during the punishment
24 hearing to determine what you believe the proper penalty
25 should be.

1 I want you to look at a sheet that is
2 up there, it looks like this, I call it a "flow chart"
3 and that kind of goes along with how a capital murder
4 trial goes.

5 Start up here at the top; you hear --
6 there is the guilt and innocence phase of the trial, up
7 underneath it says "Evidence", that means you are going
8 to hear evidence that would help you determine whether
9 the defendant is guilty or not guilty.

10 If the jury decides that the defendant
11 was not guilty then the trial is over, everybody goes
12 home.

13 If the jury decides on the other hand
14 that the defendant is guilty then you are going to go on
15 to that next phase of the trial I talked to you about a
16 little bit and that's called "the punishment phase."

17 About the middle of the page there.
18 (Indicating)

19 When you get to the punishment phase you
20 are going to hear more evidence but this evidence is not
21 going to be about the guilt and innocence of the
22 defendant because you have already made that decision,
23 this is going to be evidence that bears on the punishment
24 phase of the trial and you may hear evidence of prior bad
25 acts by the defendant, you may hear evidence of prior

1 crimes by the defendant, you may hear evidence of family
2 history, evidence of the defendant's religious belief,
3 evidence of retardation, alcoholism, psychological
4 evidence. And bear in mind when I'm talking to you about
5 this I'm not talking about this case, I'm talking about
6 any capital murder case.

7 You might hear almost anything, might
8 come in during that punishment phase of the capital
9 murder trial.

10 After you have heard all that then you
11 are going to vote, you are going to Special Issue #1
12 which is a question that you answer "Yes" or "No" and we
13 will go over that question in just a minute.

14 But you go to Special Issue #1.

15 If you vote, if the jury votes "No" to
16 Special Issue #1 the defendant will receive a life
17 sentence, if on the other hand if the jury votes "Yes"
18 to Special Issue #1 then you are going to go to Special
19 Issue #2.

20 Special Issue #2, again is a question
21 that you answer "Yes" or "No" which we'll go over in a
22 little bit, for right now you need to know is that after
23 when you answer Special Issue #2 if you answer that
24 question "Yes" the defendant receives a life sentence,
25 if you answered "No" he receives the death penalty.

1 So basically what happens is you hear
2 that punishment evidence and then you vote on Special
3 Issue #1 and Special Issue #2.

4 If you vote "Yes" to Number One, "No"
5 to Number Two the defendant receives the death penalty,
6 if you go any other way then the defendant would receive
7 a life sentence.

8 In deciding Special Issue #1 and Issue
9 #2 you are going to be able to go back in your mind to
10 that evidence you heard during the guilt and innocence
11 phase, you can consider that in making your decision on
12 those questions but you have also got to be able to
13 consider, listen and consider all that evidence that is
14 presented during the punishment hearing and not just base
15 your decision based on that evidence that you heard at
16 guilt or innocence.

17 Could you do that?

18 A Yes.

19 Q If you will there is a sheet there that on the
20 top it says "Special Issues."

21 Do you have that sheet? (Indicating)

22 A Yes. (Indicating)

23 Q Read Special Issue #1 and let me talk to you
24 about that a little bit after you have had a chance to
25 read it.

1 A Okay.

2 Q Okay. Special Issue #1 refers to the future
3 dangerousness of the defendant, is that kind of what it
4 looks like to you?

5 A Yes.

6 Q Okay. I want to point out some things about
7 that first Special Issue there, one, if you will notice
8 there the State is required to prove that to you beyond
9 a reasonable doubt just like we are the guilt or
10 innocence, we are required to prove beyond a reasonable
11 doubt that there's a probability that he would commit
12 criminal acts of violence in the future.

13 And the second thing I want to point out
14 to you is that word "probability."

15 You know "probability", the State law
16 defines "probability" as being "more likely than not",
17 just a little more than 50/50, you know, 51/49 or
18 something like that.

19 Is that -- would that definition of
20 "probability" be close to the same definition you would
21 give to "probability?"

22 A Yes.

23 Q Okay. And is that a definition that you can
24 follow and follow the law in that regard?

25 A Yes.

1 Q Okay. So the State is required not to prove
2 that it's a certainty or that we can guarantee that, it's
3 just that it's a probability that he would do that.

4 The second thing I want to refer you to
5 is that term "criminal acts of violence."

6 Of course he's charged with capital
7 murder. Of course that's a criminal act of violence but
8 we are not required to prove that he would commit another
9 capital murder, just that he would commit some criminal
10 act of violence, assault, attempted murder, rape,
11 something of that nature.

12 Of course as you know there are crimes
13 that are not acts of violence, forgery, for instance,
14 it's a crime but it's not an act of violence so we have
15 got to prove to you beyond a reasonable doubt that it's
16 probable that he would commit some criminal act of
17 violence that would constitute a continuing threat to
18 society.

19 That word "society" at the end there,
20 "society" is a term that, you know, you and I may think
21 of it as just folks out here walking on the street. But
22 the law defines "society" as including the penitentiary.

23 And where that is important is if we
24 prove to you beyond a reasonable doubt that he might
25 commit a criminal act of violence even if that criminal

1 act of violence might take place in the penitentiary --

2 MR. OLD: I object to "the
3 penitentiary", it implies a standard that is less than
4 the law and he says "If we prove to you that it might."

5 THE COURT: Sustained.

6 Rephrase.

7 MR. TOWNSEND: Excuse me, Your
8 Honor.

9 Right. We are required to prove to you
10 beyond a reasonable doubt that it's probable that he
11 would commit a criminal act of violence and if we prove
12 that to you it doesn't matter whether you believe that
13 criminal act of violence would take place in the
14 penitentiary there. You know, there are people there
15 that could be injured as well as out on the street,
16 inmates, guards, doctors, nurses, that sort of thing.

17 Are you with me so far?

18 THE POTENTIAL JUROR: Yes.

19 Q (BY MR. TOWNSEND) Okay. So in answering
20 Special Issue #1 you can go back, take that evidence you
21 heard at guilt or innocence, consider that, consider all
22 that evidence you heard during the punishment phase and
23 decide whether your answer to Special Issue #1 should be
24 "Yes" or "No"?

25 And the important thing, Mr. Hammonds,

1 is that you be able to do that only after you have
2 considered that evidence during the punishment hearing.

3 Could you do that?

4 A Yes.

5 Q Okay. If you will read over Special Issue #2
6 and then we will talk about it.

7 Okay. Special Issue #2 is kind of a
8 legal mouthful but basically I believe what Special Issue
9 #2 is saying, you know, this is -- you have already
10 decided this person is guilty of capital murder, you have
11 already decided that he's going to be a threat to society
12 or else you wouldn't be considering Number Two.

13 You know if you answer "No" to Number
14 One then you don't consider Number Two. You have already
15 decided those things.

16 Special Issue #2 is not something that
17 the State has to prove to you beyond a reasonable doubt,
18 it's just kind of your opinion. And what it says to you
19 basically is that a death penalty type of case with a
20 death penalty type defendant or is there some reason that
21 you have heard throughout the evidence that is
22 sufficiently mitigating or sufficiently reduces his
23 blame, doesn't excuse it but reduces his blame to the
24 point that you believe the person should receive a life
25 sentence rather than the death penalty.

1 And if your answer is "No" then you are
2 saying, "No. I didn't see anything there that should
3 reduce his blame."

4 If you are saying "Yes" then you are
5 saying "Well, I found something in that case, whether it
6 was from the guilt or innocence part or whether it was
7 from the punishment part that made me believe that this
8 defendant should receive a life sentence."

9 And that evidence could be something
10 that you have heard from one of our witnesses, it could
11 be something that you might hear from the Defense side.

12 Are you with me?

13 A Yes.

14 Q The important part, Mr. Hammonds, is -- I have
15 heard jurors say, "Now, wait a minute. I found this
16 defendant guilty of capital murder. I have decided they
17 are probably going to be dangerous in the future. That's
18 enough right there for me. My answer to Special Issue
19 #2 is going to be 'No' because I'm going to make sure
20 this guy gets the death penalty."

21 You see, they are not a qualified juror
22 because they are not waiting until they have heard all
23 the answers -- I mean "heard all the testimony" in that
24 punishment hearing, they are not going back and
25 reconsidering all that evidence before they answer

1 Special Issue #2.

2 Do you believe you could go back and
3 sort of mentally rethink all that evidence before giving
4 your answer to Special Issue #2?

5 A Yes.

6 Q The important part is that you answer Special
7 Issue #2 and Issue #1 based on the evidence that you have
8 heard and I guess basically just let the chips fall where
9 they may, not say, "Well, I want to give this guy a life
10 sentence so I'm going to answer them this way, I want to
11 give this guy the death penalty so I'm going to answer
12 it this way" but just answer the questions based on what
13 you have heard on the evidence after you have given it
14 all consideration.

15 Could you do that?

16 A Yes.

17 Q Okay. That word "sufficiently mitigating" or
18 those two words, "mitigating evidence" can be all sorts
19 of things, you know.

20 I talked to you about the punishment
21 hearing that you might hear evidence of all sorts and
22 type stuff like retardation, intoxication, drug use,
23 family history, age, all sorts of things, psychological
24 testimony.

25 The important part about that is that

1 you understand that in order to be a qualified juror
2 whatever that evidence is, whether it be evidence of age,
3 evidence of family history, evidence of -- from
4 psychologists, evidence from a minister, evidence from
5 a family member, wherever that testimony might come from
6 that you be willing to listen to that evidence and
7 consider it.

8 Now, once you have listened to it and
9 considered it you may decide, "Well, that's important or
10 that is not important or that is -- that's honest or
11 that's dishonest, as long as you are willing to listen
12 to it and consider it and then make that decision then
13 that's okay.

14 But on the other hand if you are the
15 type juror that is going to say, "Well, that person is
16 a family member of his. I'm not going to pay any
17 attention to her testimony or his testimony" -- do you
18 see what I'm saying?

19 A Yes, sir.

20 Q As long as you are willing to listen and
21 consider the evidence then you are a qualified juror.

22 Do you believe that you could do that?

23 A Yes, sir.

24 Q Okay. Mr. Hammonds, in deciding Special Issue
25 #1 and Issue #2 I believe you will be instructed by the

1 Court that in making those determinations in determining
2 whether a life sentence or death penalty is assessed that
3 you cannot consider in any way the possibility of parole.

4 And what that means is basically that
5 you are going to decide the death penalty or life
6 sentence and when you come to that you will just consider
7 that life is life, you know, a life sentence is a life
8 sentence and that's what it means.

9 Now, of course we don't expect you to
10 put it out of your mind that there is parole possibility,
11 just that you won't consider those in making your
12 decision.

13 And that goes to Special Issue #1.

14 Could you do that?

15 A Yes.

16 Q Same way with Special Issue #2, could you do
17 that?

18 A Yes.

19 Q And not let that play any part in your
20 deliberation?

21 A Yes.

22 Q I believe the Court will probably instruct you
23 that in this case the Defendant would be eligible for
24 parole at the end of 35 calendar years.

25 Now, that of course doesn't necessarily

1 mean he would get parole at the end of 35 years but it's
2 possible that he could. It's also possible that he might
3 never get parole but the important part is that that
4 should not be any part of your consideration in your
5 deliberating what the proper answer should be to Special
6 Issue #1 and Issue #2.

7 Could you do that?

8 A Yes.

9 Q Let me talk to you about some general areas of
10 the law, Mr. Hammonds, that relate to all criminal cases
11 basically as well as capital murder cases.

12 Let's assume for the moment that the
13 State has proved to you beyond a reasonable doubt that
14 the Defendant in this case committed the murder but did
15 not commit the robbery or we do not prove to you beyond
16 a reasonable doubt that he committed the robbery, then
17 the proper thing for the jury to do would be to find the
18 Defendant guilty of murder but not guilty of capital
19 murder.

20 Okay. Now, if you found this person
21 guilty of murder then the range of punishment changes.
22 We are not looking at life or death anymore, we are
23 looking at a different range of punishment.

24 The range of punishment on a plain
25 murder is anywhere from five years probation up through

1 99 years or life.

2 In order to be a qualified juror you
3 have got to be able to consider that full range of
4 punishment. You know, some murders are extremely
5 violent, vicious type murders, maybe you might consider
6 those the upper end of the range, whereas on the lower
7 end of the range maybe -- the Judge talked to you a few
8 weeks ago about mercy killing, a situation where maybe
9 an 80 year old man and wife lived together for, oh, 50
10 years and the husband or wife was in a lot of pain due
11 to cancer and begs the other spouse to end her life for
12 her, the other spouse pulls the plug; well, that's not
13 what we usually think of when we think of "murder" but
14 under the Texas law that is intentionally or knowingly
15 causing the death of an individual and that is murder.

16 But you can see where there are all
17 kinds of different murders.

18 And do you think considering the fact
19 that there are all -- are all sorts of different kinds
20 of murder do you think that you could consider the full
21 range of punishment?

22 And I say that to mean anywhere from
23 five years probation to 99 years of life, could you
24 consider the full range of punishment in a murder case?

25 A Yes.

1 Q Let's assume for a moment that you have looked
2 at the evidence in this case and you have decided that
3 the State had proved to you beyond a reasonable doubt
4 that the defendant committed the murder but rather than
5 believing that we proved to you beyond a reasonable doubt
6 that the defendant committed the robbery we have proved
7 to you beyond a reasonable doubt that the defendant
8 committed arson.

9 Of course arson -- murder and arson is
10 also a capital murder but that's not what we alleged in
11 the indictment, is it?

12 A No.

13 Q We alleged murder and robbery so it would be
14 your responsibility at that point as a juror to find the
15 defendant guilty of murder but not capital murder because
16 we -- because we didn't prove the robbery to you.

17 The fact there was arson involved
18 doesn't matter because we didn't allege that, did we?

19 A No.

20 Q Do you think in that situation you could find
21 the defendant not guilty of capital murder and guilty of
22 murder even though you knew there was a murder and arson
23 there?

24 A Yes.

25 Q The burden of proof in this case and in any

1 criminal case is beyond a reasonable doubt.

2 Of course you know that is not beyond
3 all doubt or beyond a shadow of a doubt.

4 The Court has a definition for you of
5 "beyond a reasonable doubt" that you will be able to
6 read.

7 Do you think that you could hold the
8 State to that burden of beyond a reasonable doubt?

9 A Yes, sir.

10 MR. OLD: Your Honor, I'm
11 going to object to the question, he's trying to commit
12 the juror to a definition that has not been shown that
13 the juror knows.

14 THE COURT: Sustained.

15 Sir, there's a definition you have
16 there, I want you to read it.

17 Right there. (Indicating)

18 It has been 22 minutes, Mr. Townsend.

19 MR. TOWNSEND: Okay. What you
20 have read there is a definition of "beyond a reasonable
21 doubt", does that definition of "beyond a reasonable
22 doubt", is it similar to what your definition would be?

23 THE POTENTIAL JUROR: Yes.

24 Q (BY MR. TOWNSEND) Is that something you could
25 hold us to to make us prove our case?

1 A Yes.

2 Q When I say "We have to prove our case", that
3 goes back to the burden of proof and of course the burden
4 of proof in any criminal case rests with the State of
5 Texas, we are required to prove the defendant guilty,
6 they are not required to prove that he's not guilty.

7 Is that something that you are familiar
8 with and can hold us to?

9 A Yes. I am familiar with it.

10 Q Okay. It kind of -- along with that goes the
11 Fifth Amendment privilege, that's the defendant's right
12 not to testify if he chooses not to.

13 And is that something you are familiar
14 with?

15 A Yes. I am familiar with it.

16 Q And that's to say that you can't hold that
17 against the defendant in any way in determining whether
18 he was guilty or not guilty, you know, you take the
19 evidence that you heard and you make your decision based
20 on that and not hold it against him even in a small way,
21 the fact that he failed to testify.

22 Could you do that?

23 A Yes.

24 Q Mr. Hammonds, that holds true also during the
25 punishment phase of the hearing and that is to say that,

1 you know, during that punishment phase you are going to
2 hear all sorts of evidence and you might wish that you
3 could hear from the defendant, you might think, "Well,
4 it might make me a little difference if he told us that
5 he was sorry."

6 But again, he's not required to testify
7 during that punishment hearing.

8 And in order to be a qualified juror you
9 cannot hold it against him if he chooses not to testify
10 during that punishment hearing.

11 Could you do that?

12 A Yes.

13 Q Okay. During any criminal trial as you are
14 aware you are going to hear from all sorts of witnesses.
15 You might hear from doctors, lawyers, Indian chiefs,
16 police officers, psychologists, ministers, might even
17 hear testimony from someone that you might know.

18 The important part is that in judging
19 people's credibility and judging their testimony you not
20 give any particular witness a head start, so to speak.

21 And when I say "a head start" I mean if
22 some guy gets up there on the stand and you happen to
23 know him and you just say, "Well, I am automatically
24 going to believe that fellow", you know, but listen to
25 his evidence just like you do everybody else's and after

1 you have heard his testimony then judge the credibility
2 of it and not give him an advantage to start with.

3 Could you do that?

4 A Yes.

5 Q Could you do that in -- in regard to police
6 officers since you have police officer training and since
7 you are a security officer I think you probably --

8 MR. OLD: Your Honor, approach
9 the bench?

10 THE COURT: You may.

11 Sir, we can't really have much of a
12 conference in this courtroom with you sitting here so I'm
13 going to have to ask you to step out for just a moment
14 so we can get a couple of matters on the record.

15 We will bring you right back.

16
17 (The following occurred outside the
18 presence and hearing of the potential juror:)

19
20 THE COURT: Let the record
21 reflect that the juror is not present in the courtroom.

22 Mr. Old?

23 MR. OLD: Your Honor, we
24 request first that the record reflect that since the
25 questioning of this juror started we have gone from two

1 uniformed officers in this courtroom to having had a
2 total of five, including the Sheriff of Titus County.

3 No one has told us any reason for beefed
4 up security.

5 We also have another Bailiff in the
6 courtroom that is not in uniform, there has been at
7 least, including Mr. Johnston who is the Bailiff from
8 Morris County who is not in uniform there has been at
9 least six bailiffs or law enforcement officers in this
10 room including the Sheriff of this county.

11 We don't know of any reason why security
12 has been increased but we do believe that we do suspect
13 and we do accuse the State of having paraded them in here
14 to influence this juror Hammonds who is a security guard
15 who holds a certificate of law enforcement in whose
16 questionnaire says he has applications for employment in
17 with police departments in this area.

18 And I think the purpose of that has been
19 to taint this witness to the State's favor and if it was
20 unintentional I think the fact that it has happened would
21 have that effect.

22 THE COURT: Let me state for
23 the record that the Court has not ordered any additional
24 security.

25 Mr. Townsend, do you wish to address

1 his objection?

2 MR. TOWNSEND: I know nothing
3 about the reason for the officers being here more than
4 usual. I would have to inquire from them to find out
5 those reasons.

6 However, I would like to note for the
7 record that Mr. Johnston who is the Bailiff in Morris
8 County but he's also an elderly gentleman, he's not
9 armed, he's dressed in civilian clothing. I don't think
10 he's a threat to anyone. I don't think he was
11 influencing in any way this juror or any other juror in
12 their answer and to insinuate that he's done anything or
13 that his presence does anything to influence a juror is
14 simply ridiculous.

15 As for the Bailiff and the Sheriff that
16 were in here, I don't know what their reasons were. They
17 were only in here briefly, it hasn't been established
18 that they have influenced this juror in any way.

19 We can ask the juror.

20 THE COURT: There has been a
21 change in Bailiffs because the Bailiff normally
22 associated with this case informed the Court in the
23 presence of the State and Defense I think on the last
24 juror that he was needed for the Grand Jury or elsewhere
25 and Mr. Johnston is sitting in for him until he is

1 available so I certainly am going to keep Mr. Johnston
2 here as our Bailiff until needed.

3 I don't know what -- why the other
4 deputies are coming and going. I know at this point
5 other than the deputy that is always here we had one
6 additional deputy in the courtroom, they have been coming
7 and going observing the proceedings.

8 This is an open courtroom, it's part of
9 the public, they are part of the public and the objection
10 is overruled.

11 MR. OLD: Could we also have
12 noted in the record that the Sheriff of Titus County,
13 John Moss, was present in the courtroom?

14 THE COURT: I don't know the
15 Sheriff. If you tell me that then I am sure you would
16 not deceive the Court.

17 THE BAILIFF: May I explain
18 that to you?

19 THE COURT: Mr. Johnston, you
20 may.

21 THE BAILIFF: I am fixing to
22 leave, I was just called up here for temporary and he
23 brought this one and he's going to relieve me because I
24 have a doctor's appointment in Longview.

25 THE COURT: Certainly, Mr.

1 Johnston, you say he's going to relieve you and you
2 pointed --

3 THE BAILIFF: He's going to
4 relieve me and he will be here the rest of the time,
5 that's why Mr. Moss brought him in here.

6 THE COURT: And Mr. Moss is
7 the Sheriff?

8 MR. OLD: Of Titus County.

9 THE BAILIFF: They just called
10 me for an emergency to relieve the other Bailiff, he had
11 more than he could handle.

12 THE COURT: You are free to
13 go whenever necessary, Mr. Johnston.

14 And Officer, what is your name?

15 A VOICE: James Moss.

16 THE COURT: And you are
17 filling in for us?

18 THE BAILIFF: He will be
19 sitting in for the next witness.

20 THE COURT: Is that true, Mr.
21 Johnston?

22 Are you "Sheriff Moss?"

23 A VOICE: No, sir. I am a
24 Reserve Deputy.

25 THE COURT: Reserve Deputy?

1 I'm sorry. I don't know all of you guys and I may get
2 everyone mixed up.

3 MR. TOWNSEND: I would like
4 for the record to reflect when Sheriff Moss did come in
5 here he was certainly here less than five minutes.

6 THE COURT: Again, I don't
7 know Sheriff Moss and I'm going to take the lawyers at
8 their word and the record will reflect that so far as I'm
9 concerned what the lawyer is stating is true and correct
10 so far as factual observation.

11 MR. OLD: Then, Your Honor,
12 so far as factual observation I would like to controvert
13 the State's conclusion that Mr. Johnston is "not a threat
14 to anybody", I would be scared to wrestle him whether he
15 was armed or not. In spite of his age he's alive and
16 well.

17 THE BAILIFF: That's right.
18 But I was just called to sit for a short time and I had
19 an appointment with the doctor and I have got to leave
20 to go to that appointment.

21 THE COURT: I appreciate it.
22 You are free to go.

23 THE BAILIFF: Mr. Moss will
24 be here for the rest of the time.

25 THE COURT: You are free to

1 go. Thanks for your assistance.

2 THE BAILIFF: I appreciate it.

3 THE COURT: One last duty, Mr.
4 Johnston, would you bring the juror back in, please, Mr.
5 Hammonds?

6
7 (The following occurred in the presence
8 and hearing of the potential juror:)

9
10 THE COURT: Mr. Townsend.

11 MR. TOWNSEND: Thank you, Your
12 Honor.

13 Mr. Hammonds, I think we were talking
14 about testimony of various parties and not letting
15 somebody get a head start.

16 So far in your mind with their testimony
17 in your training as a -- or your police officer training
18 and working as a security guard I am sure that you are
19 aware that there are what you might call "good cops and
20 bad cops and in between cops?"

21 THE POTENTIAL JUROR: Yes.

22 Q (BY MR. TOWNSEND) Is that right?

23 A I have seen them all.

24 Q Okay. Do you -- would you be able to judge a
25 police officer's testimony just like you would anybody

1 else's and not just automatically give him a head start
2 because he has got a uniform on?

3 A Yes.

4 Q Okay. What you looked at a few minutes ago was
5 the indictment in this case and/or a copy of it and I
6 think you understand from what the Judge told you a few
7 weeks ago that that indictment is not evidence of any
8 sort and that that is not to be taken as evidence in this
9 trial.

10 Could you do that?

11 A Yes, sir.

12 Q Not consider it in any way?

13 A Yes.

14 Q Mr. Hammonds, in many criminal trials you will
15 see or hear written statements taken from the defendant
16 or what you might call "confessions."

17 Those confessions, I believe the Court
18 would instruct you in a criminal trial that those
19 confessions are not to be taken and used as evidence
20 unless you decide beyond a reasonable doubt that they are
21 both truthful and voluntary.

22 And when I say "voluntary", I mean, you
23 know, voluntary legally which includes if it's
24 appropriate to the situation the reading of the Miranda
25 Rights.

1 And I know you are aware of what those
2 Miranda Rights are, aren't you?

3 A Yes.

4 Q Of course you know in taking an extreme
5 situation where a defendant is beaten in order to sign
6 a confession then of course that wouldn't -- that
7 wouldn't be voluntary but it's also not considered
8 voluntary if the defendant and the situation is
9 appropriate for it and the defendant is not given his
10 Miranda Rights -- what I'm getting to is let's take a
11 situation where you have heard a statement, it has been
12 read to you as a member of the jury or you have had an
13 opportunity to read it yourself and you had decided based
14 on the evidence beyond a reasonable doubt that that in
15 your mind that confession is truthful but you don't
16 believe it's voluntary because the officer failed to read
17 him his rights or failed to read him part of his rights.

18 Then of course legally that confession
19 is not voluntary, is it?

20 A Correct.

21 Q If that confession is not voluntary then the
22 Judge's instructions are going to be that you use that
23 confession in no way in deciding the guilt or innocence
24 of that defendant, that you not consider, that you not
25 use it and tie it together with some other evidence and

1 say, "Well, you know, this person over here testified
2 this way and that goes along with what that confession
3 said so it must be right."

4 Would you be able to take that
5 confession -- and I'm not asking -- I know you couldn't
6 put it out of your mind but would you be able to just
7 kind of set it aside and not use it in any way if you
8 found beyond a reasonable doubt or that we did not prove
9 to you beyond a reasonable doubt that it was voluntary?

10 A Yes.

11 Q Mr. Hammonds, I have been doing all the talking
12 and you have been answering my questions.

13 Is there anything you would like to say
14 or any questions you have of me right now?

15 A No.

16 Q Okay. Mr. Hammonds, do you know of any reason
17 if the evidence was appropriate in you mind that you
18 could not make the decisions needed to give someone the
19 death penalty? Do you believe you could do it if the
20 evidence was appropriate?

21 A Yes.

22 Q Mr. Hammonds, the Defense Attorneys in this
23 case are Mr. Bird Old and Lance Hinson, do you know
24 either one of these fellows?

25 A No. I do not.

1 MR. TOWNSEND: Okay. Pass the
2 juror, Your Honor.

3 THE COURT: Mr. Old.

4
5 VOIR DIRE EXAMINATION

6 BY MR. OLD

7
8 Q Mr. Hammonds, who is your mother?

9 A Blenda Hammonds.

10 Q She works at the bank?

11 A Yes. She does.

12 Q Which one, "First National, Guaranty Bank?"

13 A Across from the Guaranty, "American National."

14 Q "American National?"

15 A That's it.

16 Q Were you raised here in Titus County?

17 A Yes. I was.

18 Q Who is your grandfather Hammonds?

19 A I can't remember his first name. I never met
20 him.

21 Q In order to be a juror you must meet certain
22 qualifications, serving on juries, I think it's a
23 fundamental part of being a good citizen. I presume that
24 you agree with that?

25 A Yes.

1 Q And the statement was made that someone has
2 fulfilled their obligation of citizenship so far as jury
3 service when they answer the summons and show up, you
4 know, like you showed up the other day and it has been
5 three or four weeks ago that whether or not you are
6 qualified or selected after that does not reflect on
7 whether you are a good citizen or not.

8 Do you agree with that?

9 A I understand.

10 Q I mean there are some people that just can't
11 do certain things and that is not a criticism of them as
12 a citizen.

13 A Yes, sir.

14 Q If a person is selected as a juror he takes an
15 oath -- have you worked as a law enforcement officer?

16 A No. I have not.

17 Q Do you know that law enforcement officers take
18 an oath?

19 A Yes.

20 Q And he basically swears to uphold the law of
21 the State of Texas and the United States?

22 A Yes.

23 Q Okay. A juror takes his oath: "You and each
24 of you do solemnly swear in the case of the State of
25 Texas versus this Defendant" or "the defendant you will

1 a true verdict render according to the law and the
2 evidence so help you God."

3 That is to say you affirm or promise
4 that you will make your verdict on the law and the
5 evidence?

6 A Yes.

7 Q Now, I know you have had a lot of training in
8 law enforcement, I suspect that you studied a lot of law
9 and in my training I studied a lot of law and I suspect
10 we both studied the Texas Penal Code and Code of Criminal
11 Procedure?

12 A Yes.

13 Q And that oath is right out of the Code of
14 Criminal Procedure.

15 The Judge of this Court is the exclusive
16 judge of the law of this case. He, at the conclusion of
17 evidence will give you written instructions and those
18 instructions are the law of this case. It's called "the
19 charge", some people call it a "charge", some people call
20 it "the instructions to the jury", but that states the
21 law.

22 For example; you read the definition of
23 "beyond a reasonable doubt", that is something that will
24 be in that charge and when a court -- when the Court
25 tells you that a word has a meaning then as your oath

1 implies you have got to follow the meaning of that word
2 as the Court gave it to you, that's the law.

3 Okay. Do you have any variance in your
4 mind with the definition that you read?

5 A What?

6 Q The definition that you read earlier and you
7 are invited to read it again.

8 A Okay.

9 Q That is the law of the definition of
10 "reasonable doubt", that's not your definition, the guy
11 down the street, that's not the words that we would have
12 written down as our meaning of "reasonable doubt"
13 perhaps.

14 Now, do you think that you would -- that
15 you could make your determination of what "reasonable
16 doubt" is within the boundaries of that definition?

17 A Yes, sir.

18 Q And if you felt like the definition and the law
19 required too much you would still require the amount of
20 proof required by it?

21 A Yes, sir.

22 Q You wouldn't hold the State to a lesser
23 standard because you thought the definition put too much,
24 too large a burden on the State?

25 A Yes.

1 Q Where did you take your training in law
2 enforcement?

3 A Eastfield College in Dallas.

4 Q I believe I saw in there you did maybe an
5 internship for the police department?

6 A No. I did not.

7 Q Let me -- that's not what you said, I was
8 guessing, you said that you have witnessed a lot of
9 arrests?

10 A I worked as a security officer in Dallas.

11 Q That was not as a --

12 A No.

13 Q Did you not do any kind of internship?

14 A No. I did not.

15 Q Do you hold a certificate that would allow you
16 to go to work as a peace officer?

17 A Yes.

18 Q I mean I don't know, you work at Pilgrim's as
19 a security guard?

20 A Yes. I do.

21 Q I notice that you commented that you had
22 applications in or had made application at various law
23 enforcement agencies --

24 A Yes, sir.

25 Q -- for employment?

1 Is it your desire to become a peace
2 officer as opposed to a security guard?

3 A Yes.

4 Q You want to be a true law enforcement officer?

5 A Yes.

6 Q Do you have application with local agencies?

7 A Yes, sir.

8 Q Have them in with the Sheriff's Department of
9 Titus County?

10 A Not "the Sheriff's Department."

11 Q Not what?

12 A Not "the Sheriff's Department."

13 Q With the City Police?

14 A "City Police."

15 Q Any other towns around here?

16 A Several.

17 Q Daingerfield?

18 A I have turned in an application there.

19 Q To the Sheriff?

20 A Police Department in Daingerfield.

21 Q To the Police Department?

22 Are those applications -- I mean are
23 they still live applications?

24 A No. Not in Daingerfield.

25 Q What?

1 A Not in Daingerfield. Mount Pleasant Police
2 Department is.

3 Q Okay. I mean did Daingerfield reject you for
4 employment?

5 A Yes. They hired somebody else. Yes.

6 Q Well, I mean you hope your employment -- your
7 application is still on file if and when they needed
8 someone they would give you another opportunity?

9 A Yes.

10 Q They obviously didn't tell you "Take this back,
11 we don't want it, don't ever come back here", they just
12 selected somebody over you?

13 A Yes.

14 Q Do you belong to any police organizations at
15 this time?

16 A No.

17 Q Law enforcement organizations?

18 A No.

19 Q Do you receive literature from law -- you know,
20 the American Police Officer's Society, anything by mail?

21 A No, sir.

22 Q Anything, any such organizations?

23 A No.

24 Q Would you agree with me that peace officers are
25 an informal fraternity?

1 A Yes.

2 Q And do you consider whether you are working as
3 a police officer or not, being trained to be one do you
4 consider yourself a member of that group, that loose
5 group?

6 A No. I do not.

7 Q You would like to belong to it?

8 A Yes.

9 Q One thing that a juror must do is he must make
10 his decision on the evidence that comes before him in
11 this case, if he knows something of his own knowledge
12 that doesn't get offered in evidence he must lay it aside
13 and not violate the evidence of this case with his
14 personal knowledge.

15 Do you follow me?

16 A Yes.

17 Q Now, you must be able to start out with each
18 witness on equal footing.

19 A Yes.

20 Q Now, as to peace officers, law enforcement
21 officers or people who work for the State, people who are
22 officials of the State of Texas and specifically law
23 enforcement officers, is the fact that they are trained
24 to be a law enforcement officer and are one, is that
25 going to -- that fact alone, I mean, you know, they sit

1 down and they have their badge on, is that going to give
2 them just a little more credibility with you than a
3 witness who is not?

4 A Yes.

5 Q I mean an officer is going to start off with
6 just a little more credibility once you realize that he
7 trains -- he's law enforcement?

8 A Yes.

9 Q And not to say by the time he gets through
10 testifying you may have changed your mind but when he
11 starts off you are going to consider him to be more
12 credible?

13 A Yes.

14 MR. OLD: Your Honor, may we
15 approach?

16 THE COURT: Sir, I'm going to
17 ask you to step out for just a moment.

18 I'm giving you a lot of exercise.

19 THE POTENTIAL JUROR: I need
20 it.

21
22 (Off the record discussion.)

23
24 (The following occurred outside the
25 presence and hearing of the potential juror:)

1 THE COURT: Let's get on the
2 record and make your challenge.

3 Let the record reflect that the juror
4 is not present.

5 MR. OLD: Your Honor, as to
6 juror number 21, Gregory Scott Hammonds, the Defendant
7 has challenged the officer.

8 He answered as to being able to consider
9 witnesses equal that a man who was a peace officer and
10 that fact alone would give him a head start when he sat
11 down on the witness stand. That is to say you would have
12 more credibility with him than a witness who was not a
13 peace officer.

14 THE COURT: You are
15 challenging him for cause on that ground?

16 MR. OLD: Yes.

17 THE COURT: Does the State
18 have a response?

19 MR. LEE: That was pretty much
20 what he said, Your Honor, and there's not much we can
21 respond to.

22 THE COURT: The challenge is
23 sustained.

24 He is excused.

25 Officer, let him know that we are

1 excusing him.

2 And we will take a short break before
3 the next juror.

4 When we are -- while we are discussing
5 challenges -- let's stay on the record, when we finish
6 with a juror by the name of "Alexander", his juror number
7 is 12, I have two challenges, the first challenge from
8 the Defense was on the definition of "probability", that
9 was overruled, the next challenge was that the
10 prospective juror had participated in the offense by
11 watching for an allegedly stolen pickup truck owned by
12 the alleged victim in this case.

13 He said he had received an all points
14 bulletin.

15 I want the record to reflect that Mr.
16 Townsend has provided the Court and the Defense with a
17 copy of the all points bulletin that was received by or
18 read by witness Alexander.

19 The Court indicated this morning that
20 I was going to find the juror qualified, I have been
21 reflecting upon that decision.

22 Like I told you guys in the beginning;
23 grey areas go to the Defense. I think my desire to
24 qualify jurors may overcome my reason, I'm now leaning
25 the other way so Mr. Old, I don't need any argument, Mr.

1 Old, I don't need to hear argument from you since at this
2 point I'm inclined to sustain the challenge.

3 If the State wishes to argue that point
4 now they may or if the State wishes to do some research
5 and argue later this afternoon or in the morning they
6 may.

7 Mr. Townsend?

8 MR. TOWNSEND: Possibly in the
9 morning. I wouldn't have any opportunity to do any
10 research today.

11 THE COURT: Then I will hold
12 off until tomorrow morning on my announcement but at this
13 point I do believe that he's a potential witness. I
14 think he's very remote but I think there is a possibility
15 that he very well could be called since he participated
16 to some extent in this offense.

17 And if the State wishes to convince me
18 otherwise I will give you until tomorrow morning.

19 MR. TOWNSEND: Your Honor, if
20 this police officer was a police officer in El Paso and
21 we had a change of venue to El Paso I assume that he
22 would be counted a potential witness?

23 THE COURT: Probably if he had
24 read the bulletin.

25 I didn't make the law.

1 Let's take a break.

2
3 (Recess.)

4
5 (The following occurred in the presence
6 and hearing of the potential juror:)

7
8 REAGAN LEE EAVES, Potential Juror #400,
9 was called as a Potential Juror and, having been
10 previously sworn by the Court, testified as follows:

11
12 THE COURT: If you would come
13 around here and watch that first step here and take your
14 seat right up there on the witness stand.

15 Are you "Reagan Eaves?"

16 THE POTENTIAL JUROR: Yes,
17 sir.

18 THE COURT: This is juror 22.

19 Mr. Eaves, I am Gary Stephens, I'm
20 presiding over this trial.

21 We have two lawyers present representing
22 the State of Texas, we have the District Attorney from
23 Morris County, Mr. Richard Townsend and we have Mr.
24 Randall Lee who is with the Cass County District
25 Attorney's Office.

1 We have two Defense Attorneys, Mr. Bird
2 Old, III.

3 MR. OLD: Howdy.

4 THE COURT: And Mr. Lance
5 Hinson.

6 MR. HINSON: Good morning.

7 THE COURT: Next to Mr. Hinson
8 the person that is charged, Billy Joe Wardlow.

9 Now, Mr. Eaves, the lawyers have read
10 your questionnaire, they are going to talk to you about
11 some of your answers and they are also going to talk to
12 you about the principles of law involved in a death
13 penalty case.

14 You will be asked a lot of questions and
15 the answers will let us know whether or not to put you
16 on the jury.

17 In order to be a qualified juror you
18 must be able to understand and follow the law. You don't
19 even have to agree with all of our laws, if you disagree
20 with some aspect of the law but you can set aside your
21 disagreement and follow the law you are qualified but if
22 you disagree with some aspect of our law to such an
23 extent that you can't follow the law then you are not
24 qualified.

25 So we are going to explain some of the

1 law to you and ask you whether you could follow the law
2 and in general try to find out what you think about these
3 laws.

4 We have also found just because a person
5 is qualified doesn't necessarily mean that person would
6 be a good or appropriate juror in a death case so we need
7 to know kind of where you are going, where you are coming
8 from and how you think. The only way as lawyers that we
9 know how to find out is to ask a lot of questions and
10 what we want you to do, Mr. Eaves, is to be as open and
11 honest with us as you can and give us true answers.

12 There aren't any right or wrong answers
13 to these questions, there are no right or wrong opinions,
14 you have an absolute right to agree or disagree with our
15 law and it's your opinions that we are concerned with so
16 don't worry about what the effect of those opinions are,
17 just share them with us so we can decide whether or not
18 to put you on this jury.

19 The trial itself will not begin until
20 probably January the 3rd and the trial will last anywhere
21 from one to two weeks, maybe a little longer but probably
22 not much longer.

23 Do you know of any reason that you could
24 not serve on a jury for the first couple of weeks of
25 1995?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

THE POTENTIAL JUROR: No, sir.

THE COURT: Do you have any
questions, sir?

THE POTENTIAL JUROR: No.

THE COURT: You may proceed.

VOIR DIRE EXAMINATION

BY MR. LEE

Q Mr. Eaves, as the Judge introduced me I am
Randall Lee.

Are you any kin to P.D. or Ronald Lee
over in Linden?

A Not that I know of.

Q I was just curious.

As the Judge mentioned we are asking
questions to find out a little bit about you, about your
approach, whether you can follow the law, whether you
disagree with the law but can still follow it, that kind
of thing and just to find out if we think you are
appropriate in this kind of case.

There is no right or wrong answers, some
of my questions are going to sound like I am arguing for
the Defense but basically that's because we want to know
if you can follow the law and can you be a fair juror.

1 First of all right off the bat; we are
2 going to ask for the death penalty in this case.

3 Do you feel like in an appropriate case
4 could you vote in such a way that could -- would give the
5 death penalty to an individual in the right
6 circumstances?

7 A Yes, sir.

8 Q You think it's appropriate and you agree with
9 that part of the law on certain cases?

10 A Yes, sir. Certain cases.

11 Q In order to answer some of the questions I'm
12 going to have to explain just a little bit about the law
13 in Texas, a little bit about how we get to that; in Texas
14 there are several types of homicides but we are going to
15 be talking to you more along the lines of the types of
16 murder, there are capital murder and there's murder.

17 Murder in Texas is basically just
18 intentionally and knowingly causing the death of an
19 individual, someone walking over, shooting their neighbor
20 and getting into an argument and shooting someone or
21 things along that line and capital murder is murder plus
22 something else, something else to make it a little more
23 serious than murder.

24 For instance; killing a police officer
25 or fireman in the line of duty, killing more than one

1 person in the same episode, committing a robbery or rape
2 and killing someone and killing someone -- killing
3 someone under six years of age now is also a capital
4 case.

5 Do you kind of understand how capital
6 murder is a little different or more serious than murder
7 the way the Legislature has set it up?

8 A Yes, sir.

9 Q That sounds appropriate to you that perhaps
10 certain types of murder ought to be punished much more
11 harshly than other types?

12 A Yes, sir.

13 Q We are required to prove to you in this case
14 beyond a reasonable doubt that the Defendant committed
15 a murder in the course of committing a robbery or
16 attempted robbery. So that we are basically proving two
17 different felonies.

18 Can you hold us to that burden, make us
19 prove our case the way the law requires?

20 A Yes, sir.

21 Q In Texas we have a two-part trial basically and
22 we are one of the few states in the union that has a two-
23 part trial. That is we have a guilt/innocence portion
24 of the trial where all the evidence we bring to you if
25 you are on the jury is evidence to establish guilt, that

1 a person did the offense as alleged.

2 And then if the person is found guilty,
3 found guilty -- excuse me -- then we have a separate
4 trial, a shorter version generally as to not that he's
5 guilty, "What do we do with him" and then we bring in
6 evidence to you as to punishment, "Why should he have
7 been punished, how much should he be punished", that sort
8 of thing.

9 And the law requires that you be able
10 to keep an open mind all the way through and make your
11 decision at the appropriate times and places.

12 For instance, some jurors like to go in
13 and in a case like this especially it's a problem that,
14 "Okay, I have decided that he's guilty of capital murder
15 and then we need give him the death penalty" during the
16 guilt/innocence portion and obviously they haven't heard
17 all the evidence.

18 Can you withhold your judgment and make
19 the decision at the appropriate time and consider all the
20 evidence as it is brought in?

21 A I think so. Yes.

22 Q During the punishment phase you will be given
23 two questions, two separate questions to answer and the
24 answer to those questions will determine the sentence,
25 that of course is assuming that you find him guilty of

1 capital murder.

2 You have a document up there, I believe
3 it's Number 3 or "Voir Dire Number 3", called "Special
4 Issues", have you found that?

5 A Yes.

6 Q If you could read Special Issue #1 to yourself
7 then we will talk about it.

8 Okay. Does that -- obviously it talked
9 about "Is there a probability that the defendant will
10 commit future acts of violence" and the State is required
11 to prove that beyond a reasonable doubt.

12 Can you hold us to that burden and make
13 us bring evidence?

14 You will be allowed to consider not only
15 what you heard in the first part of the trial but
16 evidence in the second part, can you reserve your
17 judgment to that answer until the evidence is in and make
18 it based upon the evidence?

19 A Yes, sir.

20 Q There is several key words there that we need
21 to make sure you understand in deciding that, one of them
22 is "probability."

23 A lot of people would have a different
24 definition of that but assuming the Court gives you a
25 definition that "Probability means more likely than not",

1 is that pretty close to your definition, first?

2 A Yes. Pretty close.

3 Q And can you follow that?

4 A Yes, sir.

5 Q Obviously that would be, you know, if you are
6 talking percentages that would be a little more than 50
7 percent, 51 percent or "more likely than not", it's
8 leaning that direction.

9 And you could listen to the evidence and
10 make that decision based on what you hear up there?

11 A Yes, sir.

12 Q And then "criminal acts of violence", obviously
13 predicting future behavior of an individual is very
14 difficult, some of the ways to predict is what they have
15 done in the past, the best predictor of the future is
16 what has happened in the past, that's one way. There are
17 other ways to prove it but obviously we can't prove to
18 you that an individual will commit an act of violence
19 completely, we can only predict probabilities.

20 And "violence", we definitely can't
21 prove that a person will commit another capital murder,
22 that's in the future and nobody really knows what is
23 going to happen but "violence" is a general term that can
24 be anywhere from punching somebody in the nose to rape,
25 robbery, killing someone, shoot someone, it's a broad

1 range and it doesn't include other offenses, you could
2 commit a forgery, that's not "violence", that's passing
3 a check that belongs to someone else or a theft or
4 burglary.

5 But can you when you answer that
6 question can you look at the evidence as to "violence"
7 and make a decision based on the evidence that comes in
8 as to potential violence that's going to happen and not
9 on maybe other potential criminal activity or some other
10 reason.

11 Can you hold us to the burden that we
12 are required to prove?

13 A Yes.

14 Q "Society" also has a special meaning.

15 Obviously it means the people on the
16 street, it means you and me and the general public but
17 the law says basically it also means people in the
18 penitentiary since there's a lot of people that work in
19 the penitentiary, wardens, guards, nurses, doctors, other
20 inmates and nobody wants those necessarily killed either
21 except under a normal proper legal manner.

22 And can you consider society as a whole
23 when you are making that determination as to future
24 violence?

25 A Yes.

1 Q When you are deciding on this case if you get
2 to this question obviously you have already decided that
3 he's guilty, that he committed a capital murder and now
4 you have decided there is evidence that he's going to be
5 a danger in the future, that it's a probability that he's
6 going to commit some violence in the future then you go
7 to Special Issue #2 if on Number One you decide that
8 there is no -- no chance that he's going or there's no
9 probability that he's going to commit violence you don't
10 even get to Number Two, he automatically gets life.

11 But assuming that you find there is a
12 danger you would go to Special Issue #2.

13 Could you read Number Two and we will
14 talk about it briefly?

15 A Okay.

16 Q That is a fairly long question but basically
17 it's talking about mitigating circumstances, something
18 that might make the defendant less blameworthy or some
19 reason that might make him deserve life rather than the
20 death penalty.

21 Nobody can tell you as a juror what
22 mitigating circumstances are because what is mitigating
23 to one person wouldn't be mitigating to the next person.

24 If a person is intoxicated, perhaps
25 alcoholic and gets intoxicated, commits a crime, many

1 people feel like that is mitigating, if he hadn't been
2 drinking he wouldn't have committed the crime.

3 Others will feel like that may be
4 evidence that he's more dangerous, that he can't control
5 himself or that he shouldn't have been drinking in the
6 first place and different people will look at that
7 different, some people consider retardation, a severely
8 retarded individual shouldn't be held to the same
9 standard as the rest of the community.

10 Some people consider age as a mitigating
11 circumstance, the elderly or the very young shouldn't be
12 held to the same standard.

13 But nobody can tell you what is
14 mitigating and we are not asking you to tell us what
15 you think is mitigating, sometimes psychological
16 background -- the requirement is that you be able to
17 listen to all the evidence, not that it applies in any
18 particular case, but that you will listen to it and
19 consider it, can you do that?

20 A Yes.

21 Q Mitigating circumstances sometimes comes
22 through our evidence, you know, sometimes comes through
23 the Defense, it can come from various sources but
24 basically you are required to consider that.

25 And it's a safety valve to prevent some

1 injustice at someone that didn't really deserve the death
2 penalty, keep them from getting it, that's for the public
3 or for the jury to decide basically.

4 The law is real particular in a lot of
5 areas, it requires you to consider everything in order
6 not to jump from one part to another or not to bend what
7 your personal beliefs are or your personal goals, not to
8 change your answers when it's not based on the evidence.

9 For instance, if you decide early on
10 that you wanted him to get the death penalty and it's
11 obvious from the answers to these questions which will
12 result in the death penalty you are -- you are not
13 supposed to bend your belief, make up your mind ahead of
14 time and bend your answers to those questions in order
15 to get the desired result.

16 Can you answer those questions based on
17 the evidence?

18 A Yes.

19 Q And based on what you believe is right?

20 A Yes.

21 Q And can you do it in order as required in the
22 instructions that the Judge gives you?

23 A I think so. Yes.

24 Q The State is required to prove its case beyond
25 a reasonable doubt.

1 Now, there is a long definition up there
2 in front of you, I won't ask you to read it right now but
3 basically it gives you a definition of reasonable doubt
4 and if yours means a little bit different can you apply
5 the Judge's definition, the legal definition?

6 A Yes.

7 Q And put aside any personal definition that you
8 might have?

9 A Yes.

10 Q Can you hold us to that burden of proof and not
11 hold us to some other standard?

12 Sometimes you hear on TV that the State
13 is required to prove it "beyond a reasonable doubt, a
14 shadow of a doubt or any doubt whatsoever" and that is
15 obviously not the legal gauge.

16 Can you hold us to an appropriate legal
17 standard, not add some or take it away, make it an easier
18 burden?

19 A No.

20 Q Also when you are deciding on the answers
21 everyone knows there is a parole system in the State of
22 Texas and nobody can predict the result of parole, how
23 quick or how long a person or if a person will ever get
24 paroled.

25 You will note the parole -- the Judge

1 will give you an instruction on parole but the law
2 requires that you not bend your verdict because of the
3 existence of a parole law.

4 Can you put aside the fact if you feel
5 like a person deserves a life sentence, can you put aside
6 the fact that he might get off a little earlier or get
7 off early and that possibility, can you put aside that
8 and find a life sentence and ignore the fact that he may
9 or may not parole early?

10 A Yes.

11 Q And the same thing, if you feel like you cannot
12 predict how long an individual will be in the
13 penitentiary but if you think you do from reading the
14 definition and make that determination do you think the
15 individual probably deserves death but you think that
16 he's going to be put away for the rest of his life but
17 you really feel like he deserves death and we have proved
18 our case can you vote death rather than trying to lock
19 someone up the rest of their life?

20 A Yes.

21 Q To actually -- to vote when your vote is
22 required and your answer as long as the other 11 -- it
23 takes all 12 of you to decide and will boil down to your
24 shoulders and your decision and a lot of people don't
25 have the mental fortitude to make that vote, do you think

1 you do, can you do it in the right circumstances?

2 A Yes, sir. I think so.

3 Q The State has the burden of proof in the guilt
4 and innocence portion as we mentioned and we have to
5 prove the entire case.

6 For instance; the defendant is charged
7 with capital murder, to intentionally and knowingly cause
8 the death while committing a robbery and in some cases
9 in the past the State has taken on a burden and for
10 instance in this case maybe didn't prove robbery, proved
11 everything else but didn't prove robbery therefore you
12 could only find him guilty of the murder, it would be a
13 lesser included.

14 Do you think you could do that if the
15 State -- if we don't do our job and don't prove our case
16 could you find him guilty of murder rather than capital
17 murder?

18 A Yes, sir.

19 Q If we really screw up and prove that he
20 committed arson, which would still be capital murder or
21 we proved that the deceased was a police officer in the
22 line of duty, some other type of capital murder and, you
23 know, it's capital murder but we don't -- we don't do it
24 right and we don't prove that he's committing a robbery,
25 can you put aside that fact and find him guilty of murder

1 or whatever offense that was committed if a lesser
2 included but not capital murder even though you know he
3 committed capital murder we don't do our job right -- can
4 you make us do our job right?

5 A Yes, sir.

6 Q And vote appropriately?

7 And you would have to find him not
8 guilty on capital murder and some lesser?

9 A Yes.

10 Q Murder is a very very broad range of punishment
11 in Texas and in order to serve on a jury for a murder
12 case you have to be able to consider the full range, not
13 do it but consider it.

14 The punishment is probably the broadest
15 of any offense, anywhere from five years probation to 99
16 years or life.

17 Most people can think of a circumstance
18 where they could sentence someone to life on a murder
19 but some people have trouble thinking of the probation
20 end of it.

21 Under Texas -- I will give you an
22 example; if a man and wife had been married for many many
23 years, they are in their 80s, one of them gets cancer,
24 they are on life support, they are going to die within
25 the next few weeks, they are in tremendous pain and she

1 begs her husband, you know, "Do something, I can't stand
2 it any longer, please put me out of my misery."

3 And he bends down and unplugs the life
4 support.

5 Under Texas law that would be "murder"
6 and you know that might be a range where you could
7 consider the lower range of five years probation, 10
8 years probation.

9 And obviously there is a horrible --
10 horrible murder that you could consider life.

11 Do you feel like you could consider the
12 full range of punishment in a murder case?

13 A Yes, sir.

14 Q And you could consider the five year probation
15 or the 99 years or life?

16 A Yes, sir.

17 Q Also this kind of comes into the burden and
18 fairness and keeping an open mind; the law requires that
19 you be able to start each witness off on equal footing,
20 if you don't know anything about them when they get up
21 there and you make your decision on whether someone is
22 lying based on how you decide on anybody lying is
23 whatever your personal habit is, for instance, you can't
24 give a policeman a head start just because he's a
25 policeman, that you would listen to his testimony and

1 make sure it's -- makes sense, make sure it fits and make
2 your determination on truthfulness based on how you would
3 make a determination on anybody or a preacher, sometimes
4 people want to give preachers a head start.

5 Can you give each person that testifies
6 an equal chance and make your decision based on what they
7 say, how they say it, how their mannerisms are?

8 A Yes.

9 Q You won't give a policeman or a preacher or
10 somebody else a head start just because of their job?

11 A No, sir.

12 Q Obviously there are good policemen and bad
13 policemen, good preachers, bad preachers, etcetera, just
14 good people and bad people.

15 Sometimes people think that because a
16 person has been indicted, the Grand Jury chose to indict
17 them, they take that as some inference of guilt because
18 of that.

19 As a prosecutor I can tell you they
20 don't hear both sides of the story in the Grand Jury,
21 they don't hear all the evidence and the law and the
22 Judge will require that you put aside, that you not
23 consider an indictment evidence, that is merely the
24 official -- the charge he's charged with to let them know
25 exactly what they are charged with.

1 Can you not count the indictment as any
2 evidence of guilt and base your decision on what you hear
3 from the stand?

4 A Yes, sir.

5 Q Along that same line; every defendant has the
6 right to remain silent, not to say anything and whatever
7 -- if he doesn't say anything you are not allowed to use
8 that against him.

9 Can you base your decision on what you
10 hear from the stand, what we bring you and not what --
11 if he doesn't testify not the fact that he didn't
12 testify?

13 A Yes.

14 Q There may be many reasons that a defendant
15 doesn't testify, he may stutter, there could be any
16 number -- there are some legal reasons for a person not
17 to testify but you are required not to consider that
18 against him and base your decision on the evidence.

19 Do you think you can do that?

20 A Yes.

21 Q That goes to the punishment phase, too. A lot
22 of times if you find someone guilty many jurors just want
23 to hear him get up and say "I did it but I'm sorry."

24 If he doesn't get up there and say that
25 will you hold that against them if he doesn't say that,

1 if he remains silent?

2 A No, sir.

3 Q Sometimes during trial statements that a
4 defendant has made is used against him, confessions or
5 other evidence against him. The law has requirements,
6 general requirements in order for a confession to be
7 introduced in evidence.

8 For instance, obviously it can't be beat
9 out of him and there are some others.

10 We have all heard of "Miranda Rights",
11 the right to an attorney, right to remain silent.

12 The law requires that if you as a juror
13 hear the evidence and there is a confession comes in
14 but if you make the determination that it was not
15 voluntary -- "voluntary" means it was not properly taken,
16 that you not consider that confession in any way.

17 Do you think you could fulfill -- like
18 in your own mind the State may get up and admit they
19 didn't do it or you just feel like it's from the evidence
20 that it was not properly taken and involuntary legally
21 as a result, could you put aside that confession and base
22 your decision the evidence, the other evidence in a
23 trial?

24 A Yes.

25 Q And if there's insufficient evidence, although

1 you believe the confession and there is insufficient
2 evidence otherwise but the statement was taken properly,
3 could you find him not guilty?

4 A Yes, sir.

5 Q I have gone over your questionnaire and I don't
6 really see anything that seems -- do you know Mr. Hinson
7 or Mr. Old in this case?

8 A Not until the other day when I seen them,
9 that's the only time I ever seen them.

10 Q You don't know anything about the facts, you
11 haven't heard about it, read about it in the newspaper?

12 A I haven't read it in the newspaper. I have
13 heard a few people mention something about it.

14 Q Was that since you found you might get on the
15 jury?

16 A Yes.

17 Before that I didn't even know what I
18 'was coming up here for.

19 Q This is not witnesses that say they know what
20 happened?

21 A No.

22 Q Just hearsay?

23 A Yes, sir. What they --

24 Q Can you put aside anything you may have heard
25 and base your decision only on what you hear up here?

1 A Yes, sir.

2 Q In the proper situation can you vote in such
3 a way that would result in the death penalty?

4 A Right circumstances. Yes.

5 MR. LEE: Pass the juror.

6 THE COURT: Mr. Old, if we
7 start now it will probably be 12:15 to 12:30 before we
8 break for lunch.

9 Are you prepared to go now or do you
10 want to break for lunch and do this?

11 MR. OLD: Your Honor, we are
12 prepared to go along with the convenience of the Court
13 and the juror.

14 THE COURT: Then the Defense
15 may proceed.

16
17 VOIR DIRE EXAMINATION

18 BY MR. HINSON

19
20 Q Thank you, Your Honor, I'll proceed.

21 Mr. Eaves, my name is Lance Hinson, I
22 along with Mr. Old as you now understand represent Mr.
23 Wardlow in this matter.

24 I will be asking you several questions,
25 the facts or circumstances that will relate to your

1 service if you are picked as a juror or if you have any
2 question, have any -- if I fail to communicate a question
3 to you please let me know that because if we can't
4 communicate then the answers that we need from you we
5 can't get.

6 There is a document up there entitled
7 "Witness List." (Indicating)

8 A Okay.

9 Q Do you have that document?

10 A Yes, sir.

11 Q Do you have a three-page document?

12 A Yes, sir.

13 Q Would you look or read those names on that
14 Witness List and if you have heard of those names or know
15 them personally or have ever met them would you let me
16 know who those persons are?

17 A I don't recognize none of the names.

18 Q You stated that you had heard something about
19 the case or since the time you filled out your
20 questionnaire, can you tell me what you have heard about
21 the case?

22 A I just heard it was suppose to have been a
23 murder down there, older gentleman was killed.

24 Q In what town, did you hear?

25 A I think it was Cason they said.

1 Q Did you discuss with several people or just one
2 person at work or a telephone call or do you recall?

3 A Just -- just a couple people talked about they
4 seen it in the paper.

5 Q Did anyone that you talked with express any
6 opinion to you regarding the truth that may be printed
7 in the paper, whether that was the truth or allegations?

8 A No. Just what they had read.

9 Q Based on what you heard have you formed any
10 opinion as to the guilt or innocence of Mr. Wardlow?

11 A No, sir. I don't know the man.

12 Q Mr. Eaves, there is a document that looks like
13 this up there that is the indictment in this case.
14 (Indicating)

15 A Yes, sir.

16 Q I'm not sure, have you read -- did you read
17 that document?

18 A Yes, sir.

19 Q Okay. And you see and I believe Mr. Lee
20 discussed it with you the fact that there is alleged and
21 intentional death in the course of the offense or
22 robbery, do you understand how that would be a capital
23 murder as opposed to murder?

24 A Yes, sir.

25 Q Now, lesser included offense to capital murder

1 would be murder if the State failed to prove to you that
2 any offense of robbery occurred as alleged.

3 Could you consider the lesser included
4 offense of murder?

5 A Yes.

6 Q And Mr. Lee also discussed with you the range
7 of punishment for murder which is five years probation
8 and 99 years or life in prison.

9 In the proper circumstances could you
10 consider five years probation in a murder case?

11 A Yes.

12 Q And you will see there in the middle of the
13 page on the indictment or I see the middle of the page
14 where it's typewritten in in a little different type from
15 the rest of it, starts, "Intentionally cause the death
16 of an individual." (Indicating)

17 A Yes.

18 Q Do you know that capital murder is charged,
19 that there was an intentional causing the death as
20 opposed to lesser included offense of murder,
21 intentionally and knowingly or knowingly causing the
22 death of an individual?

23 A Yes.

24 Q And if you are chosen as a juror could you
25 listen to the evidence and hold the State to the burden

1 to prove beyond a reasonable doubt that there was a
2 death, was caused intentionally for capital murder?

3 A Yes.

4 Q And if you found that it was not intentional,
5 let's say you found "knowingly", could you consider the
6 lesser included offense of murder?

7 A Yes.

8 Q And, Mr. Eaves, I believe the Judge will
9 instruct you that the actual indictment is not evidence
10 for you to consider.

11 If you were chosen as a juror and you
12 have read the indictment could you set the indictment
13 aside as you deliberated and consider the evidence that
14 was presented to you here to make your decision?

15 A Yes, sir.

16 Q The indictment itself would have no influence
17 on your deliberation?

18 A No.

19 Q And I asked you previously had you formed any
20 opinion as to Mr. Wardlow's guilt or innocence?

21 According to the laws of our country a
22 person is presumed innocent until proven guilty, can you
23 start with that proposition?

24 A Yes, sir.

25 Q Now, because a person is charged by indictment

1 and brought to trial which is obvious that the trial is
2 proceeding, does that cause you to form any opinion or
3 lean one way or another as to guilt or innocence of that
4 person so charged?

5 A No.

6 Q All right. I will talk to you a little bit
7 about the punishment involved in a capital case; assuming
8 that the defendant was found guilty of a capital murder
9 in any case, I just -- so I don't confuse us both there
10 is a flow chart up there, would you look at that and you
11 see there at the first block there is "Phase I, the guilt
12 or innocence?" (Indicating)

13 A Yes, sir.

14 Q You hear evidence presented to you and you will
15 determine whether or not the defendant was guilty. If
16 you find not guilty the trial would be over, if guilty
17 you can go to Phase II, the punishment phase.

18 Let's assume that a juror in a case in
19 Phase II, the punishment phase and the consideration,
20 once a person has been convicted in Phase I of capital
21 murder the consideration would be whether that defendant
22 receives a life sentence or the death sentence, the death
23 penalty.

24 I believe you also discussed a little
25 bit the parole laws in the State of Texas. Regarding

1 this offense I believe the Court would instruct you that
2 the parole laws as they are regarding this offense would
3 require a defendant convicted of capital murder to serve
4 a minimum of 35 calendar years before they were eligible
5 for parole. That is they are not going to get out in 35
6 years, they could be considered eligible based on
7 whatever the guidelines of the Board of Pardons and
8 Paroles would have in 35 years.

9 A Okay.

10 Q Knowing that the life sentence is equal to at
11 least 35 years plus and we are still in Phase II, could
12 you still consider as a juror in any capital case,
13 consider a life sentence versus the death penalty in any
14 case?

15 A Yes, sir. The right case.

16 Q Would knowing that a life sentence would impose
17 a minimum of 35 calendar years before they could become
18 eligible for parole, would that effect your deliberation
19 as a juror where you might lean toward the death penalty?

20 A No. I would just have to see how the evidence
21 was, how the case was.

22 Q Now while we are looking to the flow chart
23 there is also a document up there called "Special
24 Issues", I believe you read over that -- and you will
25 notice there on the bottom of the flow chart in Phase II

1 of the punishment that your answer to Special Issue #1
2 and your answer to Special Issue #2 in the punishment
3 phase, that is your duty as a juror, you don't assess the
4 death penalty but by your answers this actual punishment
5 would be assessed?

6 A Yes.

7 Q Do you follow me?

8 A Yes.

9 Q Do you see there in Special Issue #1 that the
10 State is required to prove to you beyond a reasonable
11 doubt that there is a probability that the defendant
12 would commit criminal acts of violence that would
13 constitute a continuing threat to society.

14 Would you hold the State to their burden
15 of proving those facts to you beyond a reasonable doubt?

16 A Yes, sir.

17 Q And I believe you went over the word
18 "probability" with Mr. Lee as being defined by the State
19 "more likely than not?"

20 A Yes.

21 Q And you agree that would be somewhat more than
22 50 percent?

23 A Yes, sir.

24 Q Is that within your own personal definition?

25 A Yes, sir.

1 Q You would agree that "probability" is at least
2 more than 50 percent?

3 A Yes, sir.

4 Q All right. On Special Issue #2 there are
5 certain considerations taken there regarding mitigating
6 evidence and the last two lines there is the definition
7 of "mitigating evidence", would you read that again,
8 please? (Indicating)

9 A Okay.

10 Q "Mitigating evidence" as defined there doesn't
11 excuse a defendant's conduct, it's just possibly in your
12 mind, in each juror's mind, may make you believe because
13 of the person's age or background or other factors that
14 a life sentence may be more appropriate than a death
15 penalty and in answer to Special Issue #2 would you take
16 into account or consider a person's age as mitigating
17 evidence?

18 MR. TOWNSEND: Object, Your
19 Honor. He is asking the juror to go into --

20 THE COURT: Sustained. I
21 still think that's an attempt to commit a juror.

22 I think the appropriate response -- not
23 "response" but "inquiry" is to whether he can consider
24 certain factors when he considers whether or not there
25 is mitigation or mitigating evidence.

1 He's going to ask you about several
2 definitions and we are not trying to say "Yes, I will do
3 that" or make you say "No, I won't do that", we just want
4 to see if there's anything that you just have in your
5 mind that you just wouldn't listen to when you are
6 considering evidence.

7 MR. HINSON: As you are
8 answering Issue #2 and looking at the definition there
9 of "mitigating evidence" could you take into
10 consideration and not reject evidence regarding a
11 person's family history or background, how they are
12 raised, where they were raised?

13 THE POTENTIAL JUROR: Yes,
14 sir.

15 Q (BY MR. HINSON) A person's age?

16 A "Age?"

17 Q Yes, sir.

18 A I would really have to look hard at that. Just
19 because a guy is a certain age, you mean, you know, not
20 -- not to me means --

21 Q Would you automatically --

22 A -- means that he gets a lesser sentence.

23 Q Do you have or are you inclined to reject
24 mitigating evidence regarding a person's age?

25 A No. I mean, you know, like I said, it's

1 according to the circumstances for me. I just wouldn't
2 do it because a fellow is a certain age.

3 Q You would look at the circumstances, you
4 wouldn't automatically reject it but you could consider
5 it?

6 A Yes, sir.

7 Q Could you consider and not reject psychological
8 evidence regarding this defendant?

9 A Yes.

10 Q Could you consider and not reject a person's
11 religious background or religious training?

12 Could you consider that?

13 A I could consider it. Yes.

14 Q Could you keep an open mind as to any
15 mitigating evidence regardless of what someone else
16 thought if you thought it was evidence of mitigation
17 could you keep an open mind and take into consideration
18 whatever was presented to you?

19 A Yes.

20 Q On Special Issue #1 you said you could hold the
21 State to their burden beyond a reasonable doubt to prove
22 to you probability -- there is a "probability" which is
23 equal to "more likely than not" that the defendant would
24 commit criminal acts of violence that would constitute
25 a continuing threat to society.

1 Could you do that?

2 A Yes.

3 Q And you understand that any defendant in any
4 criminal case has a Fifth Amendment right not to testify
5 and as we saw in the flow chart or as you see in your
6 flow chart there, has a right to not testify in either
7 Phase I or Phase II, do you understand that?

8 A Yes, sir.

9 Q If this Defendant chose not to testify in Phase
10 I would that effect your deliberations as to the guilt
11 of that Defendant?

12 A No, sir.

13 Q In Phase II, the punishment phase, if this
14 Defendant chose not to testify would that effect your
15 deliberation as to the punishment of -- this Defendant
16 might receive?

17 A No.

18 Q Would you lean toward imposing the death
19 penalty if the defendant failed to testify in the
20 punishment phase and failed to -- well, just failed to
21 testify in the punishment phase?

22 A No.

23 Q I am looking at your questionnaire now, do you
24 have a copy of it in front of you?

25 A No, sir. I don't see it.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

THE COURT: Excuse me. A copy

of what?

MR. HINSON: The questionnaire

he filled out.

THE COURT: I have got it

right here.

(Handed to the potential juror.)

THE POTENTIAL JUROR: Okay.

MR. HINSON: On the first page

it states basically I believe that a life sentence rather than the death penalty is appropriate under the proper circumstances and you stated that you are in favor of the death penalty.

Have these been your views regarding the death penalty most of your adult life or all of your adult life, have they ever changed?

THE POTENTIAL JUROR: No, sir.

I guess they -- most of my adult life.

In certain cases, like I said, it's certain cases. I just don't believe every case is --

Q (BY MR. HINSON) Mr. Eaves, on Page 7 when we were -- when you were asked about a religious preference you wrote you were raised in the Church of Christ?

1 A Yes.

2 Q Do you belong to the Church of Christ or is
3 that just as a child or youth, you were brought up
4 through the Church of Christ?

5 A That was just as a youth. I'm not a member of
6 the Church of Christ.

7 Q And you didn't fill out a religious preference
8 and I assume that you don't have a religious preference?

9 A Yes. I am not a member of no church.

10 Q Based on your religious upbringing would those
11 contacts or your involvement in a Church of Christ, would
12 that effect your deliberations as a juror in any manner?

13 A No, sir. That was such a long time ago.

14 Q Has any member of your family or close friend
15 ever been killed as a result of any kind of criminal
16 activity?

17 A No, sir.

18 Q And on Page 11, Mr. Eaves, on the very back
19 page there at the top, "What is your personal opinion
20 about the criminal justice system?"

21 You stated it was okay and I know you
22 were limited in time to fill these out -- you weren't
23 limited in time but I am sure you could have written more
24 there.

25 Can you explain your personal opinion

1 about the criminal justice system?

2 A Well, it's the best in the world I figure and
3 I'm sure it's got some flaws in it but everything does.

4 Q We talked a little bit about probation, that
5 you could consider in a proper circumstances probation
6 in a murder case.

7 Do you have any prejudices or biases
8 against probation?

9 A No.

10 Q We talked about parole in a capital murder, the
11 defendant convicted of capital murder would have -- in
12 this case would have to serve a minimum of 35 calendar
13 years before they were eligible for parole.

14 Do you have any prejudice against or
15 bias for the parole system as you understand it in the
16 State of Texas?

17 A No.

18 Q And have you ever had a discussion with anyone
19 or hold any firm convictions regarding the sentencing of
20 repeat offenders?

21 A You know, you talk about it with people.

22 Q Would you agree that each case should be
23 considered on its own facts?

24 A Oh, yes, sir.

25 THE COURT: Twenty-five

1 minutes.

2 MR. HINSON: Mr. Eaves,
3 there's a document typewritten, looks like this.

4 Do you have that? (Indicating)

5 THE POTENTIAL JUROR: Yes,
6 sir. I believe so.

7 Q (BY MR. HINSON) Starts at the top, "All
8 persons are presumed?" (Indicating)

9 A Yes, sir.

10 Q About the middle -- a little bit -- the middle
11 of that page a paragraph starts "reasonable doubt", do
12 you find that paragraph? (Indicating)

13 A Yes, sir.

14 Q Would you read that paragraph along with me?

15 "A reasonable doubt is a doubt based on
16 reason and common sense after a careful and impartial
17 consideration of all the evidence in the case. It is the
18 kind of doubt that would make a reasonable person
19 hesitate to act in the most important of his own
20 affairs."

21 I believe if you were to be picked as
22 a juror that would be the definition that you would be
23 instructed to follow in this case and not your own
24 personal opinion or personal definition of "reasonable
25 doubt", does it vary or differ much from that definition?

1 A Basically the same.

2 Q Could you follow that definition?

3 A Yes, sir.

4 Q And hold the State to proving their case to you
5 based on that definition?

6 A Yes.

7 Q Mr. Eaves, I believe you discussed a little bit
8 previously about the credibility of witnesses with Mr.
9 Lee and in this case based on the Witness List that you
10 saw you saw several officers listed there, police
11 officers?

12 A Yes, sir.

13 Q And if you were selected as a juror and a
14 police officer was called to testify in this case would
15 his testimony carry any more credibility with you,
16 anymore weight than a non-police officer who testified
17 in this case?

18 A No, sir.

19 Q You would start off a police officer based on
20 -- you would judge his credibility, start as he testified
21 just like you would any other witness?

22 A Yes, sir.

23 Q Doesn't start off with any head start?

24 A No, sir.

25 Q We talked a little bit about religion,

1 preachers, pastors, would a pastor or preacher -- would
2 you give his testimony any more credibility than you
3 would the law officer?

4 A No, sir.

5 Q Would you give the pastor any more credibility
6 than any other witness that might be called?

7 A No, sir.

8 Q Start each witness off at the same point in
9 your own mind?

10 A Yes, sir.

11 Q Let me go back to one little spot here to
12 Special Issue #2, talks about mitigating evidence, you
13 understand that there is no burden on the defendant to
14 testify or to present any mitigating evidence to you, do
15 you understand that?

16 A Yes, sir.

17 Q If there was none presented to you could you
18 still consider a life sentence versus a death sentence
19 in a case, a capital case?

20 A Certain circumstances.

21 Q You wouldn't require the defendant to put on
22 any evidence in mitigation for you to consider a life
23 sentence?

24 A Well, I would just have to see everything, it's
25 hard to make a decision without seeing all the evidence.

1 Q I understand.

2 Say we are in the punishment phase of
3 a capital murder trial, the defendant was convicted of
4 capital murder and in Phase II, the punishment phase, the
5 defendant does not testify, there is no mitigating
6 evidence in your own mind.

7 Can you still consider a life sentence
8 and/or the death sentence?

9 A Yes. I guess I could consider both of them.

10 Q Without mitigating circumstances?

11 A Like I said, it goes back to the whole
12 circumstances for me. I would have to see all of it.

13 Q I think I'm getting a little ahead -- just
14 going back to Phase I like on your flow chart?
15 (Indicating)

16 A Yes.

17 Q "The flow chart?"

18 A Yes.

19 Q And you are a juror in a capital murder case
20 and you find that defendant guilty of capital murder?

21 A Okay.

22 Q And you are going to Phase II; can you still
23 consider a defendant convicted of capital murder, can you
24 still consider imposing a life sentence and a death
25 sentence in that case?

1 A Yes.

2 Q And you can postpone making a decision on
3 punishment until in Phase II the evidence was presented
4 to you?

5 A Yes.

6 Q And on the Special Issues, talked about holding
7 the State to their burden --

8 A Yes.

9 Q -- regarding criminal acts of violence?

10 Again, in the punishment phase if the
11 defendant did not testify and you didn't see any
12 mitigating evidence and by looking at the flow chart you
13 see that you answered Special Issue #1, you answer "No",
14 it's a life sentence, you answer "Yes" you go to Special
15 Issue #2? (Indicating)

16 A Yes.

17 Q If there were no mitigating circumstances in
18 your mind and the defendant had not testified would you
19 be more inclined to answer Special Issue #1 "Yes?"

20 A Just for him not testifying?

21 No.

22 Q With him not testifying and in your mind no
23 mitigating evidence?

24 A I really don't know, I'll be honest with you,
25 I don't exactly know what you want.

1 Q All right. Where you see on Special Issue #1
2 when you answer "Yes" you go to the next issue?
3 (Indicating)

4 A Yes.

5 Q You answer "No" to Special Issue #1, that's a
6 life sentence?

7 A Yes.

8 Q In answer to Special Issue #1 would you require
9 any mitigating evidence to answer that Special Issue #1
10 "No?"

11 A No, sir. Just -- I mean it's based on what all
12 the evidence -- if I decided I don't think he needs the
13 death penalty I wouldn't give it to him.

14 Q Mr. Eaves, back to the flow chart just so we
15 can stay on the same plane; you know in answer to Special
16 Issue #1 "No" it gives a life sentence?

17 A Yes, sir.

18 Q You answer Special Issue #1 "Yes" you go to
19 Special Issue #2?

20 A Okay.

21 Q And how you answer Special Issue #2, either
22 "Yes" or "No" again equates to a life sentence or death
23 sentence?

24 A Yes, sir.

25 Q So knowing the result of your answer, would

1 that effect your deliberations in answering those Special
2 Issues?

3 A No, sir.

4 Q You could look at the evidence presented to you
5 and not consider the effect of your answer, just answer
6 the questions as they are stated to you?

7 A Yes, sir.

8 Q In some cases, capital murder cases, other
9 types of cases the defendant may or may not make a
10 written confession and assuming that you were a juror in
11 this case it would be your job to determine the
12 truthfulness of that statement and whether the statement
13 was made voluntarily.

14 Do you follow me?

15 A Yes.

16 Q So let's assume that in the course of a trial
17 you found a statement presented to you in the evidence,
18 you found it to be a truthful statement and this truthful
19 statement was a confession of the crime as alleged in the
20 indictment but as evidence was presented to you you found
21 that for some reason by law that this truthful statement
22 had been taken from the defendant involuntarily and the
23 Court instructs you -- or I'm sorry, let me back up --
24 and as part of your deliberation you find that the
25 statement, the whole jury finds that the statement is

1 involuntary or that you find that the statement was
2 involuntary, can you set that statement, can you get that
3 out of your mind and base your decision on the other
4 evidence presented to you during the course of that
5 trial?

6 A Yes.

7 Q Knowing that a statement was truth but
8 involuntary you can set that statement aside?

9 A If he was forced into it or it wasn't legal.
10 Yes, sir.

11 Q Just one last question, Mr. Eaves; based on
12 your experiences, you are selected for the jury in this
13 case and based upon the evidence -- not "the evidence"
14 but things that you have heard today and prior to today
15 have you formed any opinion as to the defendant's guilt
16 or innocence?

17 A No, sir.

18 Q If you are selected as a juror you would be
19 able and willing to come in, take your seat as a juror
20 and start with a level playing field?

21 A Yes, sir.

22 Q And the State and the Defense would come in at
23 the same place both at the starting block?

24 A Yes, sir.

25 They would have to prove he's guilty.

1 MR. HINSON: I appreciate it,
2 Mr. Eaves.

3 We pass the juror, Your Honor.

4 THE COURT: Sir, do you have
5 any questions?

6 THE POTENTIAL JUROR: No, sir.

7 THE COURT: If you will step
8 out, I will have a discussion with the lawyers and I will
9 give you some further instructions.

10 THE POTENTIAL JUROR: Okay.

11
12 (The following occurred outside the
13 presence and hearing of the potential juror:)

14
15 THE COURT: Does the State
16 have any challenges?

17 MR. TOWNSEND: None, Your
18 Honor.

19 THE COURT: The Defense?

20 MR. OLD: The Defense does not
21 have any challenges, Your Honor.

22 THE COURT: All right. Inform
23 Mr. Eaves that we will let him know something Friday and
24 he's free to go.

25

1 (Off the record discussion.)

2

3 (Noon recess.)

4

5 (The following occurred in the presence
6 and hearing of the potential juror.)

7

8 LaWYANDA JOYCE PRINCE, Potential Juror #433,
9 was called as a Potential Juror and, having been
10 previously sworn by the Court, testified as follows:

11

12 THE COURT: Good afternoon,
13 ma'am.

14 How are you doing?

15 THE POTENTIAL JUROR: I am
16 fine.

17 THE COURT: Go ahead and take
18 a seat if you would.

19 Are you "LaWyanda Prince?"

20 THE POTENTIAL JUROR: Yes.
21 I am.

22 THE COURT: This is juror 23.

23 Ma'am, I am Gary Stephens, I'm presiding
24 over the jury selection and trial in this case.

25 We have two lawyers representing the

1 State of Texas, present we have the District Attorney
2 from Morris County, Mr. Richard Townsend and we have the
3 District Attorney or a District Attorney from Cass
4 County, Mr. "Randall" or "Randy" Lee.

5 We also have two Defense Lawyers, Mr.
6 Bird Old, III.

7 MR. OLD: Hello.

8 THE COURT: Mr. Lance Hinson.

9 MR. HINSON: Good afternoon.

10 THE COURT: Next to Mr. Hinson
11 the person charged, Mr. Billy Joe Wardlow.

12 Now, Ms. Prince, the lawyers have read
13 your questionnaire and they are familiar with your
14 answers. They are going to talk to you about some of the
15 answers and they are also going to talk to you about the
16 principles of law involved in a death penalty case.

17 You will be asked a lot of questions and
18 your answers are going to let us know whether or not to
19 put you on the jury.

20 In order to be a juror you must be able
21 to understand and follow the law.

22 Now, you don't necessarily have to agree
23 with that law, you can disagree with our laws but if you
24 can still follow the law you are qualified but if you
25 disagree with the law to such an extent that you can't

1 follow it then you are not qualified.

2 We have also found that even most of the
3 jurors are qualified it doesn't necessarily mean that
4 they are appropriate for a death penalty case.

5 So we want to know what you think about
6 our laws, we want to know what your thought processes are
7 in general and we want to know some of your opinions.

8 There aren't right or wrong answers,
9 there aren't right or wrong opinions, your opinions are
10 just yours and we want you to just be open and honest
11 with us and we will try to make this as short as
12 possible.

13 Now, ma'am, the trial itself will not
14 begin until January, probably the first week of January
15 and it will last a couple of weeks.

16 I notice that you are attending night
17 class every Monday at 4:30, is that correct?

18 THE POTENTIAL JUROR: Correct.

19 THE COURT: Will that continue
20 in January?

21 THE POTENTIAL JUROR: No. It
22 won't.

23 THE COURT: Will you be
24 attending class at all in January?

25 THE POTENTIAL JUROR: No.

1 THE COURT: Okay. So you
2 don't have any conflict -- well, let me, instead of me
3 telling you you tell me; do you know of any other
4 conflict you might have that would interfere with your
5 ability to serve for two weeks the first of next year?

6 THE POTENTIAL JUROR: No.

7 THE COURT: Okay. Do you have
8 any questions?

9 THE POTENTIAL JUROR: No.

10 THE COURT: Don't be nervous,
11 it may seem like you are on trial but you are not.

12 At this time you may proceed.

13

14 VOIR DIRE EXAMINATION

15 BY MR. TOWNSEND

16

17 Q Ms. Prince, I am Richard Townsend and I
18 represent the State of Texas along with Randy Lee in this
19 case and as the Judge said, there's no right or wrong
20 answer to these questions, we just want you to give us
21 your opinions on some things and whatever your opinion
22 is, fine, as long as you feel free to express it.

23 I looked over your questionnaire and I
24 have seen your answers on the death penalty.

25 What I would like to do right now is

1 just let you tell me or tell the Court how you feel about
2 the death penalty.

3 A I feel that the death penalty is a cruel act
4 but depending on which crime the person committed depends
5 on whether they should get the death penalty.

6 Q Okay, ma'am. So are you telling me that -- you
7 say "It is a cruel act", is that the term you used,
8 "cruel act?"

9 A Yes.

10 Q And your answer on the questionnaire was "Could
11 you give the death penalty" and your answer was "Yes"
12 then you explained that by saying, "It depends on the
13 case?"

14 A Yes.

15 Q Are you telling me that you believe in the
16 death penalty?

17 A Yes.

18 Q In certain situations?

19 A Yes.

20 Q Okay. And you also answer on there -- there
21 was a question on the bottom of the first page says, "If
22 you are in favor of the death penalty in some murder
23 cases do you agree that a life sentence rather than the
24 death penalty would be appropriate under the proper
25 circumstances?"

1 A Yes, sir.

2 Q Was "Yes?"

3 So you are telling me in certain
4 situations you would believe the death penalty was
5 appropriate and under other situations you would believe
6 a life sentence was appropriate?

7 A Yes.

8 Q And would that, I suppose depend on the facts
9 and circumstances of the case to you?

10 THE COURT: I would need a
11 verbal answer, everything is reported.

12 THE POTENTIAL JUROR: Yes.
13 I'm sorry.

14 MR. TOWNSEND: Ms. Prince,
15 there is a piece of paper up there, I think it's called
16 "Exhibit 3", if you would find that, it's a copy of the
17 indictment.

18 THE COURT: Right in front of
19 you there -- no, the one you first touched. (Indicating)

20 THE POTENTIAL JUROR: This
21 one? Okay.

22 MR. TOWNSEND: Have you had
23 a chance to read it?

24 THE POTENTIAL JUROR: Yes,
25 sir.

1 Q (BY MR. TOWNSEND) Let me talk to you a little
2 bit about murder in Texas, in Texas there are two kinds
3 of murder, basically, there's plain murder or non-capital
4 murder, that's where someone has intentionally caused the
5 death of an individual.

6 A Yes.

7 Q And that's to say without legal justification
8 or excuse, it wasn't self defense, it wasn't an accident,
9 they just intentionally caused someone's death is murder
10 but it's not capital murder.

11 A Okay.

12 Q It's punishable by up to a life sentence but
13 not punishable by the death penalty.

14 On the other hand, we also have capital
15 murder and that is murder where someone has intentionally
16 caused the death of an individual plus something else.
17 And that plus something, that's murder of a police or
18 fireman while in the line of duty, that they did commit
19 multiple murder, perhaps they committed murder during the
20 commission of a robbery or rape or burglary. Are you
21 with me on the difference between capital murder and
22 plain murder?

23 A Yes.

24 Q Okay. After reading that indictment if the
25 State could prove to you everything in that indictment

1 can you see where that would be a capital murder rather
2 than just a plain murder?

3 A I would say "just a plain murder."

4 Q Okay. Let me talk to you about that indictment
5 a little bit.

6 A Okay.

7 Q That indictment alleges in there that there was
8 an intentional murder, can you see that in there?

9 A Yes.

10 Q Can you see where it also alleges that it was
11 done during a robbery?

12 A Yes.

13 Q Okay. Now, on a -- as I was describing the
14 difference between murder and capital murder is if
15 someone intentionally or knowingly causes someone's
16 death?

17 A Yes.

18 Q That would be murder.

19 In order to be capital murder it would
20 have to be one, it would have to be a situation where
21 someone has intentionally caused another person's death
22 plus something else and one of those things that it could
23 be is if it was done during the commission of a robbery.

24 A Oh, okay.

25 Q Can you see where that situation there --

1 A Yes.

2 Q -- if we could prove all that?

3 A Yes.

4 Q That would be a capital murder?

5 A Right.

6 Q Okay. Are you with me on that?

7 A Yes.

8 Q In a capital murder case, Ms. Prince, the trial
9 is split in two parts, one part of that trial being the
10 guilt and innocence phase, the other part being the
11 punishment phase.

12 During the guilt and innocence phase all
13 you are deciding is the person guilty or not guilty,
14 basically "Did he do it?"

15 You are not worried at that time, you
16 are not concerned with at that time whether the person
17 would receive the death penalty or life sentence. You
18 are just strictly trying to determine the guilt or
19 innocence part.

20 Then when you get to that second -- if
21 the person is found guilty then you would concern
22 yourself with what the possible punishment might be.

23 There is a -- what I call a "flow chart"
24 up there, looks kind of like this, it kind of describes
25 what happens in a capital murder case. (Indicating)

1 Let me just kind of run that down and
2 you follow down the sheet with me.

3 You start off during the guilt and
4 innocence phase of the trial and you are going to hear
5 evidence and that evidence is going to relate to whether
6 the defendant is guilty or not guilty then the jury will
7 make a decision.

8 If the jury decides that the defendant
9 is not guilty then the trial is over.

10 A Okay.

11 Q If the jury decides that the defendant is
12 guilty then you go on to that next phase of the trial I
13 talked about which is called "the punishment phase."

14 At the punishment phase you have already
15 decided that the defendant is guilty, you are going to
16 hear some more evidence, that evidence is not going to
17 relate to whether the defendant is guilty or not because
18 you have already made that decision by the time you get
19 that far.

20 Are you with me?

21 A Yes.

22 Q When you get that far the evidence you are
23 going to hear is going to relate to the defendant's
24 punishment in the case, whether the appropriate
25 punishment should be a life sentence or the death

1 penalty.

2 And the type evidence you are going to
3 hear is going to be, oh, it may be evidence of prior bad
4 acts by the defendant, evidence of prior crimes by the
5 defendant, it might be evidence of his religious
6 background, evidence of his family history, psychological
7 evidence, you might hear evidence from some of his family
8 members or from a minister, you know, could be all sorts
9 of stuff you might hear during that punishment hearing.

10 After you have listened to all that
11 evidence then you have got to go to what we call "Special
12 Issue #1" which is a question that you are going to
13 answer "Yes" or "No", and I will talk to you a little
14 more about that, about those Special Issues in a minute,
15 but, first of all you are going to go to Special Issue
16 #1.

17 When you answer then you are going to
18 answer that "Yes" or "No", if you answer it "No" the
19 defendant is going to receive a life sentence, if you
20 answer it "Yes" the defendant -- then you go to question
21 Number Two, Special Issue #2 -- and again I will go over
22 that Special Issue with you in a little bit -- but if you
23 answer "Yes" to Special Issue #2 the defendant would
24 receive a life sentence and if you answer "No" to Special
25 Issue #2 the defendant would receive the death penalty.

1 Are you with me?

2 A Yes.

3 Q Okay. And the important part to remember is
4 that once the defendant is found guilty of capital murder
5 the punishment decision is not made at that point, you
6 have got to hear more evidence before you make up your
7 mind on that.

8 Do you think you could wait and not make
9 up your mind until you heard all that evidence?

10 A Yes.

11 Q Okay. Ma'am, there is a sheet there on top,
12 it says "Special Issues", if you will pull that up --
13 have you got it? (Indicating)

14 A Yes.

15 Q Okay. If you will read Special Issue #1 then
16 I will talk to you about that after you have had a chance
17 to read it.

18 A Okay..

19 Q Okay. Ms. Prince, Special Issue #1 basically
20 relates to the future dangerousness of the defendant, is
21 that kind of the way it looks to you?

22 A Yes.

23 Q Okay. There are some things about that Special
24 Issue #1 I would like to talk about, one is that word on
25 the second row there where it says "probability."

1 The law defines "probability" to us as
2 "more likely than not", is that similar to the way you
3 would define "probability?"

4 A Yes.

5 Q Okay. So "more likely than not", basically
6 means just a little bit more than 50/50, 51/49, something
7 like that, just a little more than -- more likely than
8 not, a little more than half.

9 Also if you will notice on Special Issue
10 #1 it says that you have to find beyond a reasonable
11 doubt that there is a probability, just like the State
12 of Texas has to prove the guilt in this case the State
13 of Texas also has to prove beyond a reasonable doubt that
14 it's a probability or that's more likely than not that
15 the defendant would commit criminal acts of violence in
16 the future.

17 That term there, "criminal acts of
18 violence", of course this trial is about capital murder
19 but there are other "criminal acts of violence", assault,
20 rape, attempted murder, aggravated robbery -- but then
21 of course on the other hand all crimes are not "acts of
22 violence", a forgery, you steal somebody's check and
23 right down -- sign their name to it, while that might be
24 a crime it's not violent and there are other crimes that
25 are not violent I am sure you can think of some examples

1 but, you know, we are not required to prove to you that
2 they are going to commit another murder or that it's
3 probable that he would commit another murder but just
4 that it is probable that he would commit some sort of
5 criminal act of violence.

6 Are you with me on that?

7 A Yes.

8 Q "That would constitute a continuing threat to
9 society."

10 Now, "society", you and I probably think
11 of day to day is out there on the streets, you know,
12 around town here. But the law defines "society" as also
13 in the penitentiary. If a person is in the penitentiary
14 they are still a part of society and if they were to
15 commit a criminal act of violence against someone in the
16 penitentiary, another inmate or guard or nurse or doctor
17 or something like that that would still constitute "a
18 criminal act of violence that would be a threat to
19 society."

20 Are you with me on that?

21 A Yes.

22 Q Okay. After you have heard all that evidence
23 and you talk about Special Issue number and you
24 deliberate on that then you have got to decide either a
25 "Yes" or "No" answer to that and -- and do you think you

1 could wait and hear all that evidence before -- the
2 punishment hearing before deciding what your answer
3 should be to Special Issue #1?

4 A Before I -- before what?

5 Q Okay. When you answer Special Issue #1 you
6 would have already found the defendant guilty.

7 A Okay.

8 Q But then you are going to hear some more
9 evidence, like I said, the punishment hearing.

10 A Yes.

11 Q You are going to hear more evidence.

12 A Right.

13 Q When you hear that evidence would you be
14 willing to listen to all that evidence and consider it
15 all before making your decision on Special Issue #1?

16 A Yes.

17 Q Okay. Okay.

18 Now, Ms. Prince, if you vote "No" on
19 Special Issue #1 the defendant would get a life sentence.

20 A Right.

21 Q But if you vote "Yes" then you go to Special
22 Issue #2.

23 Special Issue #2, if you will read
24 Special Issue #2 and then we will talk about it.

25 A Okay.

1 Q Okay. Special Issue #2, ma'am, is -- talks
2 about "sufficient mitigating circumstances" and basically
3 what that is talking about "Is this a death penalty type
4 case" or "Is that a death penalty type defendant" or "Is
5 there something in this case that I have heard, either
6 the guilt or innocence or during the testimony that I
7 heard during the punishment hearing that makes me feel
8 like the defendant is a little bit less blameworthy or
9 the blameworthiness of the conduct is reduced to the
10 extent that I think that he should receive a life
11 sentence rather than the death penalty?"

12 Of course that's a mouthful of legal
13 words but there it tells you that you heard the
14 testimony, you feel that the defendant should receive a
15 life sentence rather than the death penalty.

16 That's not an issue that the state has
17 to prove to you beyond a reasonable doubt, that's just
18 kind of your opinion.

19 What one person might consider to be
20 "sufficiently mitigating" or one person might think
21 reduces the blame of the defendant, someone else might
22 feel differently about that.

23 Are you kind of with me on that do you
24 think?

25 A So it would be personal decision?

1 Q Yeah. It's your opinion based on the evidence
2 that you heard. If you felt like the evidence that you
3 heard didn't convince you that there was enough there to
4 reduce his blame and give him a life sentence then your
5 answer to that would be "No" and if all the other jurors
6 agreed then that defendant would receive the death
7 penalty, if, on the other hand your answer was "Yes" then
8 the defendant would receive a life sentence.

9 Do you feel like you understand?

10 A I understand.

11 Q I know that's a bunch of wording there that is
12 kind of complicated.

13 A Will we get to study this before?

14 Q Sure. You will have written instructions and
15 they will have those questions on there and among those
16 instructions that you will receive, Ms. Prince, I would
17 think would be an instruction from the Judge that
18 indicated to you that the possibility or likelihood that
19 the defendant might at some point in his sentence receive
20 a parole would -- could not be considered in any way in
21 determining what your sentence would be.

22 And when I say that I mean when you are
23 deciding between a life sentence and the death penalty
24 you have got to be able to assume or just think of that
25 life sentence as life is life and then whether or not the

1 defendant ever received parole really shouldn't -- it's
2 something that you really shouldn't consider.

3 Could you do that?

4 A Yes.

5 Q Ms. Prince, what we have charged the Defendant
6 with is murder and robbery.

7 Let's say, for instance, that you felt
8 like at the end of the testimony that we had proved
9 beyond a reasonable doubt that the defendant committed
10 a murder or the murder but we did not prove to you beyond
11 a reasonable doubt that the defendant committed a
12 robbery.

13 Then you would be bound by your oath to
14 find the defendant not guilty of capital murder but
15 guilty of murder.

16 A Yes.

17 Q Okay?

18 A Yes.

19 Q Now, the range of punishment on murder is not
20 the same as a capital murder. The range of punishment
21 on a murder is from -- from five years probation to 99
22 years or life.

23 And of course a murder can be all sorts
24 of things, it can be anything from a vicious type deal
25 all the way to a -- from one end to the other end of

1 the spectrum where it might be what, like a mercy killing
2 -- are you familiar with a mercy killing?

3 A No.

4 Q Well, a mercy killing like maybe you have a
5 situation where you have two elderly people have been
6 husband and wife for 50 years and one of them is dying
7 of cancer and is in intense amount of pain and asks her
8 husband or wife to pull the plug and "Let me out of this
9 pain."

10 A Yes.

11 MR. OLD: I object to the
12 question, he's limiting her to that set of facts.

13 THE COURT: I think she said
14 she didn't know what "mercy killing" was. I think all
15 he's trying to do is give her an illustration so the
16 objection is overruled.

17 If that was in the form it was.

18 THE POTENTIAL JUROR: I
19 understand.

20 MR. TOWNSEND: Are you with
21 me on what a "mercy killing" is?

22 THE POTENTIAL JUROR: Yes.

23 Q (BY MR. TOWNSEND) All I'm saying in a mercy
24 killing situation that's a situation where a person has
25 intentionally or knowingly caused the death of an

1 individual so in Texas that is called "murder." Even
2 though that is very different from what you normally
3 think of as "murder", it's still a murder.

4 A Okay.

5 Q And what I'm asking you is could you consider
6 that full range of punishment?

7 And when I say that, anywhere from five
8 years probation to 99 years or life, could you give that
9 full range of punishment consideration and base your
10 decision on the facts and circumstances of the case?

11 A Yes.

12 Q Okay. Ms. Prince, the burden of proof in a
13 criminal case is beyond a reasonable doubt. It's up to
14 the State of Texas to prove the case against the
15 defendant, it's not up to the defendant to prove its
16 innocence, we have got to prove his guilt.

17 Is that something you are comfortable
18 with and familiar with?

19 A No.

20 Q Well, in a criminal case we have got to prove
21 that -- prove our case -- basically we have got to prove
22 that the defendant is guilty beyond a reasonable doubt,
23 it's not up to the defendant to prove that he's not
24 guilty or that he's innocent, it's up to the State to
25 prove that he's guilty.

1 A Okay.

2 Q Could you hold us to that burden of proof and
3 make us prove that he's guilty if he is and not require
4 the defendant in any way to prove that he's innocent or
5 not guilty?

6 A "Could I do that?"

7 Q Yes.

8 A Yes.

9 Q And along with that goes the Fifth Amendment
10 privilege and that's the defendant's Constitutional right
11 to only testify if he chooses to, if he doesn't want to
12 testify he doesn't have to, you know.

13 Are you familiar with that?

14 A Yes.

15 Q And to say that -- when I say that I mean you
16 can't hold that against the defendant in any way when you
17 are deciding whether he's guilty or not guilty, you have
18 got to decide that based on the evidence that is
19 presented and not hold it against him in any way if he
20 chose not to testify.

21 Could you do that?

22 A Yes.

23 Q Okay. Ms. Prince, in a criminal trial you will
24 hear testimony or you are likely to from all sorts of
25 different kinds of people. You might hear testimony from

1 police officers, psychologists, ministers, you might hear
2 testimony from someone you know but the important part
3 is that no matter who that witness is that you hold them
4 to the same standard.

5 And when I say that I mean give them
6 all an equal chance as far as your deciding whether to
7 believe them or not or whether their testimony is
8 important or not and not give someone a head start, so
9 to speak, just because they are a friend of yours or
10 because they are a minister or police officer or school
11 teacher or whatever.

12 Could you do that?

13 A Yes.

14 Q Okay.

15 THE COURT: Twenty-five
16 minutes.

17 MR. TOWNSEND: Thank you, Your
18 Honor.

19 Ms. Prince, I want to get back and
20 clarify a couple of things for me; on your statement
21 about the death penalty you said that you consider it a
22 cruel act, which of course the death penalty is an
23 important part of this case so I want to know as much as
24 I can about how you feel about the death penalty.

25 Do you understand that if you disagree

1 with me or disagree with any of the other attorneys or
2 if you disagree with the law that that's okay, you know,
3 that's perfectly fine. The important part to remember
4 I think is that in that just tell us the truth about how
5 you really feel and that you are open and -- about your
6 feelings and you were very open earlier when you said you
7 felt like it was a "cruel act."

8 The State of Texas in this case is going
9 to be definitely seeking the death penalty, I mean we are
10 not making any bones about it, we are seeking the death
11 penalty against this fellow right over here and we need
12 jurors who can keep a sort of a mind-set that they can
13 either go toward a life sentence or the death penalty
14 depending on the facts.

15 And of course it wouldn't be fair, you
16 know, I have had jurors say things like, "Well, if I find
17 a person guilty of capital murder then I am automatically
18 going to give them the death penalty."

19 You see, they are not a qualified juror
20 because they are not being fair and impartial, you know,
21 in keeping both options open, so to speak.

22 On the other hand, if a juror has
23 feelings about the death penalty that would interfere
24 with their ability to assess that penalty or to give
25 someone that penalty then they are not giving the State

1 maybe a fair opportunity, either.

2 And only you really know how you feel
3 but I would like you to keep in mind that, you know, a
4 lot of people feel like they have to go along with all
5 the law whether they agree with it or not in order to be
6 a good citizen.

7 Well, that's not really quite right.
8 You proved your citizenship by showing up for jury duty,
9 you proved it again by showing up today and answering
10 these questions in what is probably a fairly uncommon
11 situation for you, it is most people.

12 THE POTENTIAL JUROR: It is.

13 Q (BY MR. TOWNSEND) So your citizenship, you
14 have proved that you are a good citizen. What you don't
15 have to do is do something that goes against your grain,
16 so to speak, something that bothers you to such a point
17 that you feel as if you couldn't do it or would be
18 extremely uncomfortable doing it.

19 And being as you have told me earlier
20 that you felt like the death penalty was "a cruel act"
21 and I know you also stated in your opinion here that you
22 were in favor of the death penalty depending on the case
23 but you think it's a cruel act, would your feelings about
24 the death penalty be such that even though you feel like
25 the death penalty is appropriate in murder cases would

1 your feeling about it being a cruel act be such that even
2 though you felt like a death penalty might be appropriate
3 that you would, that you personally could not sit on a
4 jury and be one of the people that gave somebody the
5 death penalty?

6 A No. I feel like just because it's cruel I feel
7 like the death penalty is a cruel act, has nothing to do
8 with the evidence if proven, you know, that a person did
9 whatever they did.

10 Whatever they did was probably "a cruel
11 act" as well so --

12 Q Right.

13 A -- I feel like -- like that's what that person
14 deserves, that's what they should get.

15 Q So when you said earlier that you felt like it
16 was "a cruel act" you didn't mean in any way that if the
17 facts were appropriate for it that you would hesitate to
18 do it?

19 A No.

20 Q If the facts were appropriate you could do it?

21 A If they were appropriate. Yes.

22 MR. TOWNSEND: Okay.

23 Pass the juror, Your Honor.

24 THE COURT: Mr. Old.

25

VOIR DIRE EXAMINATION

BY MR. OLD

Q Ms. Prince,, I am Act III, I guess.

First; if you are selected as a juror in this case you will be required to take the oath of a juror and that oath provides and requires you to affirm that you "do solemnly swear that in the case of the State of Texas against the defendant you will a true verdict render according to the law and the evidence so help you God."

And would I correctly be stating what I just said if your job as a juror is to render a verdict on the law and the evidence in the case?

A Repeat that.

Q Your duty as a juror is to render a verdict on the law and the evidence?

Let me go a little bit further; His Honor is the exclusive judge of the law of this case, jurors are not required to know law, the Court will tell them the law that is raised by the evidence and it will give you a set of written instructions as to the law and how you are to conduct yourself in deliberating and deciding the facts.

Jurors determine facts beyond a

1 reasonable doubt.

2 As a matter of fact they don't say "Give
3 him the death sentence, give him a life sentence", they
4 answer questions which result in the same.

5 Now, the first thing a juror has to do
6 is -- to live up to his oath is to be able to take the
7 law from the Judge and accept what the Judge gives them
8 as the law.

9 Do you feel like you can take what His
10 Honor tells you in writing about the law and be governed
11 thereby?

12 A Yes.

13 Q Okay. And I know you don't know what all that
14 law is and I'm asking you to say that you will do
15 something that you don't know about but we are going to
16 talk about that in a minute.

17 And then you are to take the evidence
18 as it comes to you through this Court and make your
19 decision based on the evidence, not what you read in the
20 newspaper, not what you think might have happened, you
21 are required to make your findings on the evidence beyond
22 a reasonable doubt.

23 Now, the Court's instructions or charge
24 is the law of the case, you will find before you a typed
25 sheet, looks like this, I believe it has a "6" on the

1 bottom of it. (Indicating)

2 A Okay.

3 Q Will you start reading -- I mean read from the
4 end of the first paragraph starting with "Prosecution has
5 the burden of proving" and to the end of the page for me
6 and when you are comfortable with it let me know.

7 A Okay.

8 Q Are you finished?

9 A I am finished reading but I'm not really
10 comfortable.

11 Q That is -- what the Court is telling you that
12 is in his charge and it will be in his charge that when
13 you are required to find something happened beyond a
14 reasonable doubt that that is your guide in doing so and
15 you must make your decision within the boundaries of that
16 definition.

17 Could you do that?

18 A If that's what I'm supposed to do.

19 Q Let me argue with you, I mean, yes, that's what
20 you are supposed to do, you obviously have some
21 disagreement with that definition.

22 If you were going to define the word it
23 would not come out the same, is that right?

24 A Right.

25 Q What?

1 A Right.

2 Q Now, this -- I'm not challenging your
3 citizenship, whether you are a good or bad person, the
4 question is whether -- I mean there are laws, everyone,
5 if we go far enough with anybody we will find a law that
6 you just can't, you know -- there's laws I would have to
7 say, "No. I could not be a fair juror in this case
8 because I don't believe that ought to be the law, I just
9 can't do it, I recognize and accept it as the law but I
10 mean I would violate my conscience to act on that law."

11 Now, is your prejudice or your feeling
12 about that definition to the extent that you can tell me
13 whether or not your own feelings about that are going to
14 interfere with your deliberations?

15 And that was a poor question.

16 A I still would say, you know, I have to, I would
17 do what I am supposed to do, follow this. (Indicating)

18 Q Now, you disagree with the definition?

19 A Right.

20 Q To what extent do you disagree with the
21 definition?

22 A I don't know how to answer that.

23 Q What?

24 A I don't know how to answer that.

25 Q Okay. That may be a good answer.

1 What you are saying is you just aren't
2 comfortable with being told what reasonable doubt means
3 and to be governed thereby?

4 A Right.

5 Q I'm not asking you, I know you would try to
6 follow the instruction of the Court, I have no doubt in
7 my mind about that but you are going to have difficulty
8 doing so in that you really don't agree with the
9 definition?

10 A Do I not believe --

11 Q Are you going to have difficulty deliberating
12 in this case, that is making a decision based on that
13 definition?

14 A I am not sure.

15 Q You can't tell me for sure you can accept and
16 follow that definition?

17 A No. I can't.

18 Q Let me go on to another area of the law; when
19 His Honor in his charge, the law of the case, tells you
20 that a word has a special legal meaning that means you
21 are to use that definition and not your own, whether you
22 like it or not.

23 I mean sometimes we just can't do things
24 and we talked about that.

25 In the indictment in order for that man

1 or anyone to be committed or convicted for capital murder
2 -- we'll stay away from this case -- but for anyone to
3 be convicted of capital murder it must be proved that he
4 intentionally killed a person.

5 "Intentional" is a word that has a
6 specific and real meaning, we say it means something in
7 law, the law says it does and that's another one of those
8 words the Court will tell you intentional means and what
9 it will tell you is that "A person acts intentionally or
10 with intent with respect to a result of his conduct when
11 it is his conscious objective or desire to cause the
12 result."

13 Okay. Now, can you accept that as the
14 definition of the word "intentional, intentionally?"

15 A Read it again.

16 Q Okay. "A person acts intentionally or with
17 intent with respect to a result of his conduct when it
18 is his conscious objective or desire to cause the
19 result."

20 A Yes.

21 Q Okay. I mean you don't have any problem with
22 the meaning of that word?

23 A No.

24 Q Okay. In order to find a person guilty it must
25 be proven to you that a person acted intentionally?

1 A Yes.

2 Q Doesn't make any difference if they don't prove
3 he intentionally killed someone, whether or not it was
4 in the course in attempting a robbery has nothing to do
5 with it if intentional is not proven then you would have
6 to say by your verdict to capital murder "not guilty?"

7 A Right.

8 Q I don't recall whether or not Mr. Townsend
9 defined the lesser offense of murder for you or not, non-
10 capital murder -- non-capital murder is intentionally or
11 knowingly taking the life of another.

12 "Knowingly" has another legal meaning.
13 "Knowingly" will be -- you will be instructed that
14 "knowingly" means "A person acted knowingly or with
15 knowledge with respect to a result of his conduct when
16 he's aware that his conduct is reasonably certain to
17 cause the result."

18 Do you see the difference between
19 "intentionally" and "knowingly?"

20 A No.

21 Q Which one do I need to read back for you?

22 A "Knowingly."

23 Q Okay. "A person acts knowingly or with
24 knowledge with respect to a result of his conduct when
25 he is aware that his conduct is reasonably certain to

1 cause the result."

2 A Okay.

3 Q Now, let's say that you believe beyond a
4 reasonable doubt that in an indictment or in that
5 indictment and in that charge that person accused acted
6 knowingly but not intentionally, could you find -- I mean
7 that's the only -- they just, you know, say, "Well, he
8 acted knowingly but he didn't act intentionally."

9 Can you accept those two definitions and
10 say by your verdict "not guilty" as to capital murder if
11 it was proven to you "knowingly" and not "intentionally?"

12 A Yes.

13 Q Okay. Regardless of the consequences of it?

14 A Yes.

15 Q Okay. Another thing the law will ask you to
16 do in some cases you may have a statement or a confession
17 of the person charged, there is an issue that the jury
18 is asked to decide and that is whether or not the
19 statement or confession was voluntarily taken.

20 And the Court will tell you what
21 "voluntarily" means or tell you what must be done and
22 what cannot be done in order for a statement to be
23 voluntary.

24 Are you familiar with the word "Miranda
25 Warnings?"

1 A No.

2 Q Well, that's "You have the right to remain
3 silent, you have the right to a lawyer, any statement may
4 be used against you, you have the right to stop
5 interrogation or questioning at any time."

6 Is that -- are you more familiar with
7 "Miranda" now that I have made those statements?

8 A Yes.

9 Q Now, the persons taking a statement on behalf
10 of the State of Texas must tell someone before it can be
11 used, I mean it's a condition or, you know, for it to be
12 a voluntary statement then -- I mean obviously a
13 statement can be beaten out of somebody, coerced, but I
14 mean those things have, you know, become a fact issue for
15 the jury to decide and before you could consider a
16 confession you must believe beyond a reasonable doubt
17 based on the evidence that you heard that the statement
18 was voluntary.

19 Okay. Let me put you in a position, in
20 a jury room you have heard the evidence in a case, a
21 confession has been offered into evidence, you read the
22 charge and the Judge tells you basically this statement
23 is voluntary if the Miranda Warnings were given, it's not
24 a result of being coerced or beaten and you are not to
25 use this confession for any purpose unless you find it's

1 voluntary.

2 You are sitting there in the jury room
3 and you have a reasonable doubt that the confession is
4 voluntary, which means you would have to find the
5 confession that you have read and heard, you would have
6 to make a finding that it is involuntary -- follow me?

7 A Yes.

8 Q But yet on the other hand you believe
9 absolutely that the statement is true.

10 Now, I mean you are in a position of
11 believing the statement is true and knowing that it is
12 not voluntary.

13 The Court tells you "Unless you find it
14 is voluntary I want you to forget about it, I do not want
15 you to use it for any purpose and I don't want it to
16 influence your verdict. The knowledge in that statement
17 you will remove from your mind so far as considering the
18 evidence in this case."

19 Let me -- I think the exact or close
20 words the Court will tell you, "You will not consider the
21 statement or confession for any purpose whatever or any
22 evidence obtained as a result of it unless you find it
23 is voluntary beyond a reasonable doubt."

24 A Yes.

25 Q Okay. You are sitting here, you believe that

1 statement is true.

2 Can you set it aside and not let your
3 belief that it is true influence your verdict?

4 A Yes.

5 Q You can?

6 I mean you could remove it and set it
7 aside?

8 A Yes.

9 Q Now, I am -- the law asks us to do some hard
10 things.

11 A For sure.

12 Q Anyone that can sit here and tell me "I
13 wouldn't have a bit of problem in this world doing that"
14 I would really question it.

15 It would be hard to do, wouldn't it?

16 A Well, no. I deal with that everyday.

17 Q What?

18 A As a school teacher you have to deal with some
19 of those things everyday anyway, so I'm used to putting
20 it to the side.

21 Q You could lay it aside even though you believe
22 it to be true if you are convinced that it was
23 involuntary?

24 A Yes, sir.

25 Q Let me go back to one thing the Court is going

1 to tell you in his instructions.

2 The Court will instruct you probably in
3 the punishment phase of the trial, "You are further
4 instructed that in determining the punishment in this
5 case you are not to discuss among yourself how long the
6 Defendant will be required to serve any sentence imposed.
7 Such matters come within the exclusive jurisdiction of
8 the Board of Pardons and Paroles and are not your
9 concern."

10 You will first be told that a person
11 being tried or you have found guilty of capital murder
12 has to serve 35 calendar years a day at a time until he
13 becomes eligible for parole.

14 I know you know what the word "eligible"
15 means but what that means is "you qualify", to be
16 "eligible" doesn't mean you parole, it does not mean that
17 you will ever parole.

18 I don't know, I'm making that point
19 because some people just assume that when someone becomes
20 eligible for parole they are going to parole.

21 Do you assume that?

22 A No.

23 Q What this is, we know, you know, or have some
24 idea about parole but we don't want you considering it
25 and in deliberating in this case we want you to presume

1 that when you say life or the answer to your question
2 says life?

3 A "It's life."

4 Q That "life equals life" being that person will
5 be in the penitentiary for the rest of their lives.

6 In assessing a life sentence versus
7 another sentence, whether it be the death sentence or
8 whether it be a period of years can you lay aside the
9 rule -- the possibility of parole?

10 A "Can I lay it aside?"

11 Q Can you lay it aside and not use it in arriving
12 at your verdict as to punishment?

13 A I thought it would only be life or death, is
14 that what you --

15 Q Okay. Okay. Excuse me. We are
16 miscommunicating.

17 A Yes.

18 Q Do you remember me talking to you about the
19 difference between the word "intentionally" or
20 "knowingly?"

21 A Yes.

22 Q We have what we call "lesser and included
23 offenses."

24 Let's say the evidence in this case --
25 Mr. Townsend used the example you found beyond a

1 reasonable doubt that the person charged intentionally
2 killed someone but you did not find that it was in the
3 course of a robbery.

4 A Okay.

5 Q Okay. That would make them not guilty of
6 capital murder.

7 A Right. Just "murder."

8 Q But then you would come back, they
9 intentionally or knowingly killed someone which is non-
10 capital murder or plain murder chronicled by from --
11 punishable by five years probated to life.

12 A Okay.

13 Q Well, let me just -- I was asking you about
14 whether or not if you could lay aside those instructions
15 as to parole, doesn't make any difference whether it's
16 a capital case or non-capital case you still have to
17 assess punishment either by answering a number of years
18 or in the case of capital murder by answering questions
19 "Yes" or "No" which determines life or death.

20 Okay?

21 A Yes.

22 "Would I consider the possibility of
23 parole in assessing the punishment in a case?"

24 You say too much.

25 MR. OLD: I'll tell you what

1 the Court is going to tell you, it's going to tell --
2 what we are really saying is, yeah, you know about it,
3 you have some idea about it and the only thing we can
4 tell you it's going to equal at least 35 -- if you give
5 someone life or in the event you are not determining life
6 or death I think that he would tell you that -- Judge,
7 you correct me if I misstate it.

8 THE COURT: I will correct
9 you.

10 MR. OLD: That a person is not
11 eligible until they have served one-fourth of the actual
12 years given, not -- one-fourth of the actual years given
13 not to exceed 15 and to be less than I believe -- I
14 believe two.

15 And I'm asking the Court.

16 THE COURT: "Two."

17 MR. OLD: Which means a non-
18 capital life sentence would require someone to serve at
19 least 15 years before they became eligible for parole.

20 THE POTENTIAL JUROR: Yes.

21 Q (BY MR. OLD) Would you not consider the laws
22 of parole in assessing punishment whether it be a capital
23 case or non-capital?

24 A "Would I not consider it?"

25 Q Not consider the possibility of parole?

1 A I would consider it.

2 Q You would consider it?

3 And I mean you just don't think you
4 could take it out of your mind and lay it aside?

5 A I don't know.

6 Q What?

7 A I don't think I'm understanding your question.

8 Q Okay. What the Court tells you is that you
9 are not to concern yourself with the laws of parole in
10 reaching your verdict --

11 A Okay. If the verdict is 35 --

12 Q It's not a concern for you.

13 A If -- are you asking me if the sentence is a
14 life sentence and in 35 years the person could -- could
15 be eligible for parole?

16 Q Okay. He's eligible. "Eligible" does not mean
17 you get parole.

18 A Right.

19 Q It merely means you can apply for it.

20 A Right.

21 Q Or you will come up for it and be considered.
22 It doesn't mean that you will be paroled.

23 A Right. So what you are asking me --

24 Q What is the question?

25 A That can I just throw it out?

1 Q Can you throw it out and not let it effect your
2 sentence?

3 A Yes, sir.

4 Q Let me go to a non-capital case.

5 THE COURT: Excuse me.

6 MR. OLD: In a murder case you
7 are asked to assess a number of years between five years
8 probated and life.

9 THE POTENTIAL JUROR: Yes.

10 Q (BY MR. OLD) And I stumbled through what you
11 would be told as to the range of the punishment and I
12 believe it's up to one-fourth of the sentence but not to
13 exceed 15 years and not less than two years, you have to
14 serve two years regardless and even if you get a life
15 sentence then it's not more than 15 until you become
16 eligible.

17 A Yes.

18 Q Okay. Now, the thing that I mean and I'm not
19 implying you would do this but let's say you decided you
20 wanted a man to spend 15 years in the penitentiary, you
21 wanted to be sure that he was going to be there 15 years
22 and you said, "Well, we can either give him life which
23 means he will serve at least 15 or we can multiply four
24 times 15 and get 60 and give him 60 and that means that
25 he will have 15 years to actually stay in the

1 penitentiary."

2 A Okay.

3 Q Okay. Knowing, you know, the mathematical
4 portion of it would you consider if you said you wanted
5 to give this man life that you are in fact locking him
6 up for the rest of his life or would you consider the law
7 of parole?

8 A The law of parole.

9 Q You would have to consider it? It would bear
10 on your mind?

11 A I still don't think I'm understanding your
12 questions.

13 THE COURT: Excuse me a
14 moment, Mr. Old.

15 Here's the problem that we run into,
16 sometimes a person may be back there deliberating in a
17 jury room and they may think the appropriate sentence is
18 20 years but then they stop and say, "Well, I've heard
19 all this stuff about parole, he's not going to serve 20
20 and I'm going to give him 40", that's wrong. That's not
21 what you are supposed to do. If that's what you will do
22 or think you will do that's fine, I'm not telling you
23 what you should or should not do, I'm telling you as a
24 qualified juror you cannot do that.

25 In a death penalty case you have to

1 decide based on the evidence whether certain things
2 justify of a death sentence or not. We don't want
3 someone getting back there saying "Life doesn't mean
4 life, he might get paroled so we will vote to make sure
5 that they stay in there."

6 If you think that it could cause you to
7 up your sentence to try to keep him there longer then
8 that's wrong.

9 The rules concerning parole can change
10 from year to year.

11 THE POTENTIAL JUROR: Right.

12 THE COURT: The Parole Board
13 changes its policy, somebody that gets a 20 year sentence
14 10 years ago may serve 10 years, somebody that gets a 20
15 year sentence today may serve 18 years, some may serve
16 20 years of 20 years, it depends on their conduct in
17 prison, it depends on lots of factors.

18 All we do is tell the jurors, "You know
19 there is parole but when you assess your sentence don't
20 let the fact that parole is possible influence you."

21 If you can do that fine, if you can't
22 that's fine.

23 Excuse me, Mr. Old. I will let you
24 continue with your questions.

25 MR. OLD: Approach the bench?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

THE COURT: Yes.

Do you want me to have the juror step out for a moment?

MR. TOWNSEND: Please.

THE COURT: Ma'am, will you step out for a moment while I have a discussion with the attorneys?

(The following occurred outside the presence and hearing of the potential juror:)

MR. OLD: I think the last five minutes I questioned Lance was trying to push a note under me, kept pushing it back saying the State agreed.

THE COURT: You agreed?

MR. OLD: Next time you are offering to agree grab me a little harder.

THE COURT: Okay. I understand that based on some of the juror's answers the State and Defense have agreed to excuse this juror, is that correct, Mr. Townsend?

MR. TOWNSEND: Correct, Your Honor.

THE COURT: Is that correct, Mr. Old?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MR. OLD: That's correct.

THE COURT: Tell her she is
-- bring her back in, I want to talk to her.

Off the record.

(Off the record discussion.)

(The following occurred in the presence
and hearing of the potential juror:)

THE COURT: Ma'am, we are
going to excuse you as a prospective juror, you are free
to go.

I just wanted to bring you back in and
tell you that so far you have the prettiest handwriting
of any of these questionnaires I have looked at.

But you are free to go and we are not
going to bother you anymore.

So you have a good day.

(Off the record discussion.)

(The following occurred out of the
presence and hearing of any potential juror:)

1 THE COURT: Let's get on the
2 record.

3 It is my understanding that there has
4 been three indictments in this case, the original
5 indictment appears to me to have been returned
6 on July 22nd, 1993 out of the 76th Judicial District
7 Court.

8 I'm going to instruct the Reporter that
9 when he is transcribing this trial to show that this case
10 is being tried by me as or under assignment to the 76th
11 Judicial District Court of Morris County.

12 Mr. Old, do you have any objection to
13 designating the 76th as the Court of record?

14 MR. OLD: No, Your Honor.

15 THE COURT: Mr. Townsend, do
16 you have any objection?

17 MR. TOWNSEND: None, Your
18 Honor.

19 THE COURT: All right. Mr.
20 Reporter, so designate the 76th as the Court of
21 jurisdiction.

22 Are we ready?

23
24 (Recess.)
25

1 (The following occurred in the presence
2 and hearing of the potential juror:)

3
4 JANELL ANN SMITH, Potential Juror #118
5 was called as a Potential Juror and, having been
6 previously sworn by the Court, testified as follows:

7
8 THE BAILIFF: Have a seat
9 right there and watch your step. Go all the way around
10 there. Have a seat right up there next to the Judge.

11 THE COURT: How are you doing
12 this afternoon?

13 THE POTENTIAL JUROR: Good.
14 How are you?

15 THE COURT: Pretty good.
16 Ma'am, go ahead and take your seat.

17 Are you Janell Smith?

18 THE POTENTIAL JUROR: Yes.
19 I am.

20 THE COURT: This is juror 24.

21 Ma'am, I'm Gary Stephens, I'm presiding
22 over this trial. We have two lawyers representing the
23 State of Texas, we have the Morris County District
24 Attorney, Mr. Richard Townsend.

25 MR. TOWNSEND: Hi.

1 THE COURT: And we have a
2 District Attorney from Cass County, Mr. Randall Lee, we
3 have two attorneys representing the Defendant, Mr. Bird
4 Old, III.

5 MR. OLD: Hello.

6 THE COURT: Mr. Lance Hinson.

7 MR. HINSON: Good afternoon.

8 THE COURT: Next to Mr. Hinson
9 is the person charged, Billy Joe Wardlow.

10 Ma'am, the lawyers have read your
11 questionnaire and they are familiar with your answers and
12 they are going to discuss those answers with you.

13 They are also going to talk to you about
14 the principles of law involved in a death penalty case.
15 You will be asked a lot of questions and the answers will
16 let us know whether or not to put you on the jury.

17 In order to be a juror you must be able
18 to understand and follow the law. You don't necessarily
19 even have to agree with the law, it's like driving down
20 the road, you may not agree with the 55 mile speed limit
21 but if you can obey it then you are following the law and
22 that's what we want you to do as a juror but if you
23 disagree with some aspect of our law to such an extent
24 that you cannot follow the law then you are not qualified
25 so we need to discuss the law that applies to you and

1 find out whether you can follow that law.

2 Ma'am, we have also found that even
3 though most people can understand and follow the law that
4 doesn't necessarily mean that they are an appropriate
5 juror for a death case so we want to know something about
6 your views on our law and how you feel about various
7 issues so we can decide if this is a task that you should
8 undertake.

9 The thing I want to explain to you is
10 that you as a citizen of this country you certainly have
11 a right to disagree with anything we are saying and we
12 are not going to judge you based on your opinions, we are
13 going to judge your ability to sit on the jury but not
14 you.

15 I don't want you to hedge on anything.
16 If you don't like what you are hearing, if there's
17 something about what we are telling you you don't like
18 be honest with us. We are not going to take issue with
19 you. There aren't any right or wrong answers and there
20 are no right or wrong opinions.

21 Both sides are looking for 12 fair
22 unbiased jurors that can follow the law and do whatever
23 the right thing is and that right thing will be
24 determined by the evidence and if you are one of those
25 12 we want you and if there's some reason you can't be

1 on the jury or can't follow the law then it's not going
2 to hurt our feelings. That's why we brought in all those
3 people a few weeks ago.

4 We just want honest from you.

5 Now, ma'am, the trial is going to start
6 in January. When we start trial it will probably start
7 two weeks, you will be required to sit on one of those
8 chairs over there and we will be in the courtroom
9 anywhere from an hour, hour and a half then take a break,
10 we will work approximately from 9:00 to 5:00.

11 I plan at this point for the jurors to
12 be able to go home at night. If for some reason we start
13 getting a lot of news coverage on this case I might have
14 to put you up in a motel during the trial but I don't
15 plan on it during this time.

16 Once the testimony is over and the jury
17 has been retired to begin its deliberation the jury will
18 be kept together until a verdict is reached. The day we
19 start argument then you will be put up in a motel
20 overnight.

21 I'm going to go over all this with you
22 because the medical condition you told us in the
23 questionnaire, in the questionnaire you said you have a
24 bad back and arthritis, do you think that will interfere
25 with your ability to sit as a juror for a two week

1 period?

2 THE POTENTIAL JUROR: No. It
3 doesn't keep me from doing what I have to do but I have
4 a lot of pain but I live with it.

5 THE COURT: The chair that you
6 are sitting in now is the same chair that will be in the
7 jury box, does that chair seem to be comfortable that
8 you will be able to sit?

9 THE POTENTIAL JUROR: Yes.

10 THE COURT: So you are not
11 concerned about your jury service?

12 THE POTENTIAL JUROR: No.

13 THE COURT: Do you know of any
14 other reason that you could not serve a two week period?

15 THE POTENTIAL JUROR: No. I
16 don't.

17 THE COURT: The State may
18 proceed.

19
20 VOIR DIRE EXAMINATION

21 BY MR. LEE

22
23 Q Ms. Smith, as the Judge mentioned, my name is
24 Randy Lee and I'm from Cass County and as he also
25 mentioned we are just asking questions not only to see

1 if you can follow the law but get a feel for your
2 personality, background and feelings and just try to make
3 a decision in our opinion whether this would be the type
4 of case that you should sit on.

5 A lot of people have trouble with the
6 death penalty and that's an area that a lot of people
7 just can't seem to do and so I'm going to jump right into
8 this; we are going to ask for the death penalty, we are
9 going to pursue that and that's the purpose we are here
10 today and according to your questionnaire you don't seem
11 -- you seem to agree with it.

12 Is that the case, that you can agree on
13 certain cases to give the death penalty?

14 A I believe in letting the punishment fit the
15 crime.

16 Q And under the right set of circumstances you
17 would have no problem voting in such a way that would
18 give a person the death penalty?

19 A No.

20 Q Could you vote in such a way if you thought it
21 was the right situation to give a person a life sentence
22 on a capital --

23 A Yes.

24 Q -- capital murder case?

25 I don't believe I know you but does

1 Richard Townsend, do you know him or has he represented
2 you?

3 A No.

4 Q The same question for Mr. Bird Old or Lance
5 Hinson?

6 A No. I don't.

7 Q Do you know anything about them?

8 A No.

9 Q Okay. In Texas as far as murder there are two
10 different types of murder, there are several types of
11 homicides but there are two different types of murder.

12 There's murder which is intentionally
13 and knowingly cause the death of an individual, two
14 people fighting or shooting each other or many ways to
15 cause a death and then there's capital murder.

16 Capital murder is murder plus something
17 else and the statute outlines what that something else
18 is.

19 For instance, it could be two murders
20 in the same -- arising out of the same circumstance or
21 it could be a murder and a robbery or killing two police
22 officers -- killing a police officer or a fireman in the
23 line of duty and killing -- there is any number of ways
24 to commit capital murder.

25 Do you kind of see the difference there,

1 that's murder plus something else?

2 A Yes.

3 Q In this case we have alleged that in the course
4 of committing a robbery the Defendant committed murder,
5 do you see where that would be capital murder as opposed
6 to "murder?"

7 A Yes. I do.

8 Q In Texas we have a two-part trial, we have a
9 guilt/innocence portion of the trial which basically both
10 sides introduce evidence as to the guilt, as to whether
11 the person committed the offense he's charged with then
12 if a person is found guilty we go to a second trial, it's
13 a shorter or generally shorter but it's a punishment
14 phase of the trial, that's, "Okay, now that you have
15 decided he's guilty what do you do with him", type trial.

16 The law requires that you are able to
17 not make up your mind ahead of time on what you will do
18 but listen to all the evidence and decide in order of
19 what you are going to do to be fair and open-minded until
20 all the evidence has come in and not just jump the gun
21 and decide just because he's guilty he needs the death
22 penalty.

23 Do you think you could wait until the
24 appropriate time as the Judge directs and --

25 A Yes. I do.

1 Q -- wait until all the evidence comes in?

2 The burden of proof is on the State, we
3 are required to prove to the jury beyond a reasonable
4 doubt all the elements of the offense, that's both in the
5 guilt portion and in the punishment portion, can you hold
6 us to that burden and make us do our job?

7 A Yes.

8 Q And the Judge will give you a definition of
9 reasonable doubt, if you have a different definition in
10 your own personal meaning can you use the Judge's and put
11 aside your own personal definition if it's a little bit
12 different?

13 Everybody wouldn't agree on every
14 meaning of a word but in this kind of case we have got
15 to have one meaning and everybody follow the Court's
16 instruction.

17 A I think so.

18 Q You need to take a look at a document that we
19 have up there called "Special Issues" at the top of the
20 page, I believe it has a "number 3", should be sitting
21 in front of you there somewhere. It will have two
22 questions, two long questions.

23 Have you found that?

24 A Here? (Indicating)

25 Q No.

1 THE BAILIFF: Underneath that,
2 ma'am.

3 THE COURT: That's it.
4 (Indicating)

5 MR. LEE: Could you read
6 Special Issue #1 to yourself and then we will talk about
7 it briefly.

8 THE POTENTIAL JUROR: Yes.

9 Q (BY MR. LEE) In order to get to that point in
10 the trial where you are answering that question you would
11 have already found the defendant guilty of capital murder
12 in the guilt/innocence portion and will be at the
13 conclusion of the punishment portion, you have heard the
14 evidence and obviously Special Issue #1 is talking about
15 probability that the defendant will have to commit
16 criminal acts of violence as a continuing threat to
17 society. The State will be -- we will be required to
18 prove to you that -- that there is a probability of acts
19 of violence because obviously we can't prove that there
20 definitely will be because that would be in the future.

21 Do you kind of see what that question
22 is saying?

23 A All right.

24 Q I will take it step by step.

25 A All right.

1 Q If the Judge gives you a definition of
2 probability that would mean it's more likely than not to
3 happen, a little over 50 percent that some act of
4 violence will probably happen.

5 Can you follow that definition that the
6 Court gives you or would you -- would you agree with that
7 definition that it's more likely -- "probability" means
8 "more likely than not" that it will happen, not that it
9 won't but it's more likely than not that it will happen?

10 Is that pretty much what your definition
11 would be?

12 A Right.

13 Q And we have to prove beyond a reasonable doubt
14 that there is a probability of violence in the future.

15 Now, criminal acts of violence, it
16 doesn't have to be murder, obviously we can't prove to
17 you that any individual will commit murder in the future.

18 "Violence" can be anywhere from murder,
19 it could be assault, rape, robbery, shooting, stabbing,
20 punching people in the nose, just -- there's a whole
21 range of violence and there are various ways to prove
22 probability.

23 Past acts of violence, that's the way
24 we prove a lot of things to show what someone has done
25 in the past as to the likelihood of what they will do in

1 the future.

2 But can you hold us to that burden and
3 if it's proved to you that it's more likely than not that
4 the defendant will commit acts of violence that you could
5 answer "Yes" to that question if we prove it to you?

6 A If you prove it to me.

7 Q "Society" is -- also causes people some
8 confusion and that's Special Issue #1.

9 Obviously it means the people on the
10 street, you and I, you know, you go out of the
11 courthouse, all the people walking around but the courts
12 have also said that "society" means people in the
13 penitentiary. A lot of people work there. There are
14 guards, there are wardens, there are doctors, nurses and
15 there is inmates.

16 Is that -- would that include your
17 definition of "society" if that's -- would you feel like
18 they are part of society also in that definition?

19 A If they are in --

20 Q Their own society but it's a society as a
21 whole?

22 A I guess so. Yeah.

23 Q And obviously we -- we don't want to put a
24 threat to anyone, even guards and we don't want to have
25 a continuing threat necessarily to guards or prison

1 officials or even other inmates, we don't want to
2 necessarily cause them anymore threats than necessary.

3 Would you agree with that?

4 A Yes.

5 Q Okay. Could you read Special Issue #2 and we
6 will talk about that?

7 That's a long statement but basically
8 it seems to be talking about some other reason why a
9 person might ought to be given a life sentence rather
10 than death, "mitigating", something that would make them
11 less blameworthy in this particular case than maybe
12 another case, is that kind of your meeting, what you take
13 out of the reading?

14 A Yes.

15 Q And nobody can tell you personally what
16 mitigating -- what is mitigating, what evidence should
17 be mitigating, what you should consider but basically the
18 law requires that you listen to the evidence and consider
19 or think about it, that you not make up your mind until
20 you have heard all the evidence and that you look -- you
21 look at the whole situation in making up your mind.

22 Do you think you could do that?

23 A Yes. I could.

24 Q Some people -- "mitigating" means one thing,
25 to others it means something completely different.

1 If a person is severely retarded a lot
2 of people feel like they shouldn't be held to the same
3 standard as the average person, that their intellectual
4 capabilities ought to be taken into account, some people
5 would think age, there are extremely older persons or
6 younger persons, that ought to be taken into account,
7 some people take into account their raising, their
8 background, there are any number of things that some
9 people may consider, other people wouldn't.

10 "Intoxication", some people might think
11 if he wasn't drunk it wouldn't have happened or the next
12 person would say, "Well, he shouldn't have been
13 drinking", maybe it ought to make it worse.

14 So only you can decide what is
15 mitigating.

16 Can you listen to all the evidence and
17 just say -- not say that you are never going to consider
18 it as mitigating until you have heard it?

19 A I think so.

20 Q That's a little hard to answer ahead of time
21 because you don't know what the answer is?

22 A Right.

23 Q But -- but can you withhold making up your mind
24 until you have heard all the evidence?

25 A Yes.

1 Q You are deciding you don't actually -- if you
2 are on the jury you won't actually fill in a blank that
3 says "This person needs the death penalty" or "This
4 person needs life in the penitentiary" but, however, it
5 will be obvious from the questions that you are to answer
6 what the result of those answers are so when you answer
7 a question you will know what those results are and what
8 will happen as a result of your answer.

9 Can you put aside that knowledge that
10 you know the result and answer it truthfully based upon
11 the evidence?

12 A Yes.

13 Q And not try to avoid one sentence or the other
14 just because you don't want that result?

15 A Yes.

16 Q Some people have that problem and that's really
17 why we ask, they want to bend the evidence to fit their
18 result that they want.

19 There are possibilities or it has
20 happened in the past on other cases on a capital murder,
21 for instance if something like that was to happen in this
22 case, the State proved the murder, proved that the
23 individual committed the murder but they don't prove the
24 robbery, the other element that makes it capital murder,
25 if we don't do our job and don't prove the robbery beyond

1 a reasonable doubt can you discard that and come back
2 with a verdict of guilty of murder, lesser included,
3 rather than capital murder if we don't -- if we don't
4 meet the burden, we don't prove a robbery, we just prove
5 that he caused the death? Can you come back and find him
6 not guilty of capital murder and find him guilty of
7 murder as the result of that verdict if we don't -- if
8 I don't do my job?

9 A "If you don't do your job?"

10 Q If I don't do my job and I don't bring the
11 evidence to you on robbery, I prove the murder but I
12 don't prove the robbery, can you find him not guilty of
13 capital murder?

14 A I don't think so.

15 Q Do you think you would find him guilty of
16 capital murder if I don't prove it to you?

17 A No. If you prove to me that he did it?

18 Q Right.

19 A Because he's innocent until he's proven guilty.

20 Q Exactly.

21 So I think I am probably wording the
22 questions wrong.

23 A I don't understand the whole concept.

24 Q Part of what I have got to prove to you, not
25 that I have got to prove that to you -- that on that date

1 that he intentionally and knowingly caused the death of
2 an individual in the course of committing a robbery --

3 MR. OLD: I object. That's
4 a misstatement of the law.

5 THE COURT: I believe you need
6 to remove the word "knowingly."

7 MR. LEE: If he intentionally
8 caused the death of an individual in the course of
9 committing a robbery or attempted robbery.

10 So obviously I have got to prove several
11 things in that, intentionally causing the death and I
12 have got to prove a robbery or attempted robbery.

13 If I just prove "intentionally caused
14 the death" can you find the defendant not guilty if I
15 don't prove the robbery, not guilty of capital murder
16 because obviously it wouldn't be capital murder?

17 THE POTENTIAL JUROR: Well,
18 yes. I guess so.

19 Q (BY MR. LEE) And in that case if I just proved
20 murder you could find him guilty of murder I am assuming
21 because that's what he actually did if I don't prove --

22 A Yes.

23 Q The range of punishment -- we will have to talk
24 a little bit about that -- for capital murder, you will
25 have -- the Judge will have or you will have, depending

1 on you all's answer, two classes for the sentence, either
2 life in the penitentiary or the death penalty, one or the
3 other.

4 There's no probation, nothing else.

5 However, if it's murder in Texas there's
6 a big range of punishment, anywhere from five years
7 probation to 99 years or life in the penitentiary.

8 And the reason there is a huge range of
9 punishment is because there is all kinds of murder,
10 intentionally and knowingly caused the death of an
11 individual covers a broad range of possibilities.

12 For instance, you could have an 80 year
13 old man, couple been married for years, all their life,
14 the woman is dying of cancer, in great pain, on life
15 support, she is going to die within a few weeks, maybe
16 a few days but she is in terrible pain, begs her husband,
17 "Please do something about the pain, put me -- put me to
18 death."

19 And he unplugs the life support system.

20 When he does that under Texas law that's
21 "murder", that he caused her death by unplugging the
22 machine but obviously that is a case that you might want
23 to consider the lesser range of punishment.

24 Is that or is that or some other
25 situation an area that you could consider a probated

1 sentence on a murder case, something along those lines?

2 You might think of your own
3 possibilities.

4 A Yes.

5 Q And obviously there's cruel and violent murder,
6 could you consider life in the penitentiary for a murder
7 on some other fact situation?

8 A Yes, sir.

9 Q So if you had to find someone guilty of murder
10 you could consider the full range of punishment and not
11 make up your mind ahead of time?

12 A Right. Right.

13 Q You could give the defendant that benefit?

14 The law also requires that you not give
15 an advantage to one side or the other in the sense that
16 as witnesses we'll call police officers, that they
17 require that you not believe a police officer simply
18 because he's a police officer but that you put him on the
19 same level as any other witness and listen to his
20 testimony and see if it makes sense and see -- can you
21 do that?

22 A Yes.

23 Q You won't give a policeman a boost just because
24 he's a policeman?

25 A No.

1 Q Obviously good cops and bad cops in every
2 place?

3 A Right.

4 Q Preachers, and I know jurors, a lot of people
5 want to give a preacher a boost, there are good preachers
6 and bad preachers, could you put them on the same level
7 that you would any other witnesses?

8 A Yes, sir.

9 Q And even the defendant or the defendant's mom?

10 A Yes.

11 Q And you could listen to what they have to say,
12 make your determination as to truth based on what they
13 say?

14 A Yes.

15 Q In the United States every person has the right
16 to remain silent, not to say anything, not to incriminate
17 himself, basically Fifth Amendment, it's a right and the
18 law requires that you not hold that against them if they
19 don't say anything, that you make -- basically the theory
20 is that the State has to prove their case on what comes
21 from the stand, not what he doesn't say, what is said on
22 the stand, not what is not said.

23 Can you base your decision on the
24 evidence and not let the fact if the Defendant doesn't
25 testify, not let -- consider that fact, just put it aside

1 that he didn't testify and base your decision solely on
2 what you hear from the stand and from the evidence?

3 A Yeah. Yeah. I guess so. You know, proven to
4 me.

5 Q Right. If the Judge tells you that's what you
6 are supposed to do you can do it?

7 A Yes.

8 Q You hesitated a little bit so I will ask a
9 couple more.

10 That means in the punishment phase a lot
11 of people say, "You found him guilty of capital murder
12 but you want to hear him and let him get up there and say
13 you are sorry", can you put that "want to" -- you are
14 going to think about it but can you put that aside and
15 base what should happen to him on the evidence and not
16 the fact that he didn't testify if he doesn't testify?
17 Could you not hold that against him?

18 There might be all kinds of reasons, he
19 might be a stutterer, he might not can speak, there could
20 be any number of reasons. There are some legal reasons
21 why he might not want to put him up there but the law
22 requires that you be able to put that aside.

23 Could you not hold that against him?

24 A No.

25 Q You wouldn't hold it against him?

1 A No.

2 Q It's tough to say because we really don't know
3 the evidence and don't know what is going to happen?

4 A Right.

5 Q What we are doing here, we are asking you
6 everything that we can think of that might happen that
7 might interfere with your ability to decide fairly and
8 we know it's going to be hard for you to think -- we
9 don't expect you to put this out of your mind but that
10 you be able to set it aside and base your decision on
11 what the law says and what the evidence is. We know you
12 can't just arbitrarily put everything out of your mind,
13 especially if they tell you "Don't think about it", it's
14 going -- that makes it that much harder not to think
15 about it.

16 But do you think you can set those
17 things aside and make your decision on the evidence?

18 A Yes. I do.

19 Q A lot of people have a problem with the
20 indictment, that once a person has been indicted they
21 automatically assume that is some kind of evidence.

22 But as a prosecutor I can tell you that
23 only one side is heard in the Grand Jury room, the Grand
24 Jury doesn't hear anything from the defense, they only
25 hear one side of it and the indictment is just solely

1 charged, it's just a piece of paper telling them exactly
2 what they are charged with and it's not evidence of
3 anything.

4 Can you not consider the fact that an
5 individual is indicted against him and use it?

6 It's basically on what you hear, not on
7 what somebody else heard.

8 A Yes.

9 Q And you wouldn't use the indictment as
10 evidence?

11 A No.

12 Q The law has a lot of requirements and along
13 with the Fifth Amendment right there are rights that any
14 confession or any statement made by the defendant be
15 voluntary and the purpose of that is obviously you can't
16 beat a confession out of someone then expect that to be
17 evidence or you can't take a statement and in such a way
18 that it violates their rights.

19 And there are various requirements on
20 taking statements, for instance; they have to be
21 Mirandized, they have to be read their rights and waive
22 those rights.

23 Are you familiar with the Miranda Rules,
24 the right to remain silent, the right to have an attorney
25 and if you can't afford to have one to have one

1 appointed?

2 And if you watched Dragnet a few years
3 ago obviously they have gone over and over those.

4 A Yes.

5 Q The law requires basically that if a statement
6 is taken involuntarily, you know, for instance say --
7 this is not the case -- but say in a trial you are
8 serving on a jury and the officer says, "Oops, I forgot
9 to tell him he had the right to an attorney and I didn't
10 read him his rights, I just told him to give a statement
11 and he did."

12 And the Judge will give you an
13 instruction if it was illegally taken that you set that
14 aside, that you are not to consider it for any purpose.

15 If something like that happened could
16 you do that? Could you set aside a confession that you
17 believe was true and base your decision on the other
18 evidence that was introduced and not let the confession
19 play a role in your judgment?

20 A I think so.

21 Q Obviously we don't want statements that -- the
22 purpose of that, we don't want statements that were beat
23 out of someone or something along those lines that makes
24 it involuntary, you can get some kind of far out facts
25 as far as hypothetically; if the case took place, we

1 don't introduce, give anymore evidence other than the
2 statement, say we give a confession and that's the only
3 evidence that we have and you believe that statement was
4 taken involuntary, you believe it's a true statement,
5 could you find a defendant -- if that's the only evidence
6 -- could you find a defendant not guilty because the
7 confession was taken illegally?

8 A I think I would have to have more --

9 Q To find him guilty?

10 A -- than that.

11 Q Right. Okay.

12 Let me make sure; you would have to find
13 -- have more evidence to find a defendant guilty than an
14 illegally taken statement?

15 A Yes.

16 Q And obviously if you thought it was illegally
17 taken you couldn't even use that statement. Could you
18 set that aside, aside the fact that it was illegally
19 taken?

20 A "Could I set it aside?"

21 Q Yes.

22 A "If I thought it was illegal?"

23 Q You couldn't set aside the confession and not
24 consider it?

25 I think I asked the question backwards,

1 let me rephrase it; if in that situation I gave you
2 awhile ago where we gave you a statement and you decide
3 that was illegally taken, based upon what the Judge tells
4 you that the law was violated, can you put that statement
5 aside and not consider it as evidence if we did it wrong
6 or the officer did it wrong, they didn't do their job,
7 can you not consider that evidence, put it aside, not use
8 it for any purpose if they did it wrong?

9 A "If the law did it wrong?"

10 Q Yes. If the cops did it wrong, they took a
11 statement wrong?

12 A That would be illegal, wouldn't it?

13 Q It would be illegal, right.

14 And if it's illegally taken and you
15 believe it's illegally taken can you put that aside and
16 not use that as evidence in your mind?

17 A Yeah.

18 It's a mind boggling thing.

19 Q A lot of these questions --

20 A Mind boggling.

21 Q -- a lot of these things you never thought
22 about, it takes lawyers years of law school to figure out
23 these weird fact situations and you are going to be
24 presented a lot of fact situations and if you don't
25 understand the question please don't hesitate to tell me.

1 What you are basing it on -- if you give
2 an answer and you are basing it on -- if you think I'm
3 confused or you are confused let me know because these
4 are hard questions to ask.

5 A Okay.

6 Q And I believe you stated that your health --
7 let me find your questionnaire -- in answer, on Page 11
8 you said -- the question was "Do you have any personal
9 or health problems that would prevent you from giving
10 your full attention to the testimony at trial?"

11 And I believe you told the Judge that
12 that really wouldn't interfere with your ability?

13 A Well, I have a lot of pain but I live with it.
14 It doesn't keep me from doing what I have to do.

15 Q And you could put that aside and listen to the
16 evidence?

17 A Yes. Yes. I can.

18 Q In case I didn't talk to you I will go back up
19 a little bit on punishment; the law obviously -- everyone
20 knows that there is a parole system in Texas that some
21 people can get parole and get out early on a sentence
22 that is given under certain circumstances, you know, it
23 happens, you hear it on the news.

24 The Judge in effect will tell you that
25 parole is a possibility if a person is given a life

1 sentence, however, he also tells you that you can't
2 consider the fact that parole -- that he might get out
3 early, might get out early, can you put that aside?

4 If you feel like he deserves life can
5 you consider life as being life and put aside the fact
6 that someone else down the line, some parole board might
7 let him out sometime in the future and if you think he
8 deserves life can you give him life and not consider the
9 fact that -- that he might get out early?

10 A Yes. I can.

11 THE COURT: Twenty-five
12 minutes.

13 MR. LEE: Thank you.

14 Along those lines; some people like to
15 feel like if it's a murder trial you feel like he needed
16 20 years but you are afraid that he will get out early,
17 some people say, "Give him 40 to make sure that he
18 doesn't get out in 20."

19 Can you not do that and give the person
20 what you think they deserve and not let the fact that a
21 parole board or anybody else might do something
22 different?

23 THE POTENTIAL JUROR: Yes,
24 sir.

25 Q (BY MR. LEE) Same thing, if you feel like he

1 deserves the death penalty can you give him the death
2 penalty?

3 A I don't know.

4 Q That's a real important question in this.

5 A It's really a hard one.

6 Q We understand that. We are not trying to trap
7 you into -- there's no right answers.

8 How unsure are you?

9 Do you feel like you can't do it or
10 probably can't do it?

11 A I just don't know if I could or not. I mean
12 it's wrong to take a life, any life, I believe that.

13 Q You think it's wrong to take any life?

14 A I would have to wait I think to see all the
15 evidence and hear it.

16 Q We are going to have to pick on you a little
17 bit on that question because that's what -- that's a big
18 part of this trial, we are going to ask for the death
19 penalty and if you serve on the jury you have to be able
20 to consider that or think about giving the death penalty
21 and not only that, there will be 11 other people but
22 there may become a fact situation where all 11 people
23 say, "Yeah. He deserves the death penalty" and it boils
24 down to your decision and your decision alone.

25 It's got to take all 12 of you to agree

1 to give somebody the death penalty so it will boil down
2 to you personally.

3 In one sentence; are you going to be
4 able to make the appropriate answers to the questions
5 that it will boil down to your shoulders that you have
6 the power, death, an effect on that decision and that's
7 a big -- that's a lot to ask a person to do.

8 A Yeah. It is.

9 Q And your answer concerns me a little bit along
10 those lines because we are going to ask for the death
11 penalty.

12 Do you think that your feeling that it's
13 wrong to give the death penalty or murder is wrong in any
14 case, is that going to interfere with your ability to
15 decide?

16 A I don't know. It might.

17 I just -- I just don't know if I could
18 do that.

19 Q Is there -- I am going to kind of pick on you
20 a little bit because you are going to have to give an
21 answer for the Defense, it's going to ask that question
22 over and over again because that's something -- could you
23 yourself put your name in the blank?

24 A Can I say that --

25 Q Sure. Go ahead.

1 A -- if it's proven to me beyond a doubt that
2 this boy took that man's life then, yes, I could.

3 Q Is that beyond any doubt?

4 A Beyond any shadow of a doubt in my mind that
5 this boy took his life.

6 Q And if the Judge gives you that definition of
7 reasonable doubt you are going to want to know it's
8 beyond any doubt?

9 A I want to know -- know. Yes.

10 THE COURT: Are you saying
11 that you are going to make the State prove it more
12 strongly to you than even they are required to by that
13 piece of paper?

14 I want you to look at that definition
15 "reasonable doubt" again.

16 THE POTENTIAL JUROR: This
17 one? (Indicating)

18 THE COURT: No, ma'am. The
19 other one right below it. I want you to reread that
20 starting with the second full paragraph, I think it
21 starts "Burden of proof", read that to yourself.

22 THE POTENTIAL JUROR: I am
23 saying that it has to be proven to me.

24 MR. LEE: I think we need to
25 approach the bench anyway if we are going to let her kind

1 of review that.

2 THE COURT: Ma'am, would you
3 mind stepping back into the jury room for a moment, it's
4 kind of hard to have conferences here with a juror here
5 the way the courtroom is laid out.

6 THE BAILIFF: Watch your step,
7 ma'am.

8
9 (The following occurred outside the
10 presence and hearing of the potential juror:)

11
12 (Off the record discussion.)

13
14 THE COURT: Let's get on the
15 record.

16 Mr. Old, I understand that the juror was
17 excused where there was some discussion between you and
18 your client and between you and the State, the end result
19 is you agree to excuse juror 24, Ms. Smith, is that
20 correct?

21 MR. OLD: That's correct, Your
22 Honor. That's our recommendation.

23 THE COURT: Mr. Townsend, do
24 you agree?

25 MR. TOWNSEND: We agree.

1 THE COURT: She is excused,
2 Leo, tell her she is excused and we appreciate her coming
3 down.

4 Now, let's go off the record.

5
6 (Off the record discussion.)

7
8 (Record closed for November 2nd, 1994.)

9
10 (Whereupon Court was recessed until
11 10:00 a.m., November 3rd, 1994.)

12
13
14 *****

15

16

17

18

19

20

21

22

23

24

25

1 STATE OF TEXAS §
2 COUNTY OF TITUS §

3
4 I, Lloyd E. Billups, CSR #149 and
5 Official Court Reporter in and for the 76th Judicial
6 District, State of Texas, do hereby certify that the
7 above and foregoing contains a true and correct
8 transcription of the proceedings in the above-styled and
9 numbered cause, all of which occurred in open court or
10 in chambers on November 2, 1994 and were reported by me.

11 I further certify that this
12 transcription of the record of the proceedings truly and
13 correctly reflects the exhibits, if any, offered by the
14 respective parties.

15 WITNESS MY HAND this 31ST day of
16 January, 1995.

17 

18 LLOYD E. BILLUPS, CSR #149 & OFFICIAL COURT REPORTER
19 76TH JUDICIAL DISTRICT, STATE OF TEXAS
20
21
22
23
24
25

1 Certification Number of Reporter: 149
2 Expiration Date of Certification: 12/31/96
3 Business Address: Drawer 1868
4 Mt. Pleasant, Texas 75456-1868
5 Telephone Number: 903/577-6735
6 Transcribed By: Tandra K. Gibson
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25